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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 22, 1959

CERTIORARI GRANTED NOVEMBER 16, 1959

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the Sixth Circuit		
Petition for enforcement of an order of the National Labor Relations Board	A	1
Answer of respondents	C	3
Proceedings before the National Labor Relations Board	2	7
Intermediate report	2	7
Decision and order	78	65
Excerpts from transcript of testimony	84	71
Appearances	84	72
Offer in evidence	85	72
Stipulation of counsel	85	72
Excerpts from testimony of—		
Glen Evans—		
direct	98	74
Oscar Newman—		
cross	126	75

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 18, 1960

	Original	Print
Proceedings before the National Labor Relations Board—Continued		
Excerpts from transcript of testimony—Continued		
Excerpts from testimony of—		
Maynard Matz—		
direct	141	76
cross	172	77
George Ghearing—		
direct	176	78
Donald M. Seward—		
direct	205	78
General Counsel's Exhibit No. 1-C—Charge against Communications Workers of America Local No. 4372	396	81
General Counsel's Exhibit No. 1-D—Charge against Communications Workers of America	397	83
Consolidated complaint	399	84
General Counsel's Exhibit No. 1-H—Answer of Communications Workers of America, AFL-CIO, to complaint	409	94
General Counsel's Exhibit No. 1-I—Answer of Local No. 4372, Communications Workers of America, AFL-CIO, to complaint	412	96
General Counsel's Exhibit No. 1-J—Motion to amend consolidated complaint	415	99
General Counsel's Exhibit No. 4-A—Letter dated May 11, 1956 from Ohio Consolidated Telephone Co., to Communications Workers of America	416	100
General Counsel's Exhibit No. 4-B—Letter dated May 14, 1956 from Communications Workers of America to Ohio Consolidated Telephone Co.	417	101
General Counsel's Exhibit No. 4-C—Letter dated July 20, 1956 from Communications Workers of America to Ohio Consolidated Telephone Co.	419	103
General Counsel's Exhibit No. 31—Stipulation —C.W.A. & Ohio Consolidated Telephone Company	536	104

	Original	Print
Decree	537	104
Opinion, per curiam	538	105
Respondents' motion for reconsideration and rehearing	540	106
Order denying petition for rehearing	548	113
Clerk's certificate (omitted in printing)	549	113
Order allowing certiorari	550	113

[fol. A] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL No. 4372, Respondents.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed October 13, 1958

To the Honorable, the Judges [illegible] United States Court of Appeals for the Sixth [illegible]

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order dated May 1, 1958. The consolidated proceeding resulting in said order is known upon the records of the Board as Case Nos. 9-CB-327 and 9-CB-328.

In support of this petition the Board respectfully shows:

(1) Respondents, Communications Workers of America, AFL-CIO, and its Local No. 4372 are labor organizations engaged in promoting and protecting the interests of their members in the State of Ohio, within this Judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on May 1, 1958, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondents, and their respective officers, representatives, agents, successors and assigns. On the same

date, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid bearing Government frank, by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 13 (7) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of tes- [fol. B] timony, exhibits, and other material comprising the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board and requiring Respondents, and their respective officers, representatives, agents, successors and assigns, to comply therewith.

Thomas J. McDermott, Associate General Counsel,
National Labor Relations Board.

Dated at Washington, D. C., this 10th day of October, 1958.

[fol. C] [File endorsement omitted]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Title omitted]

ANSWER OF RESPONDENTS—Filed October 31, 1958

To the Honorable, the Judges of the United States Court of Appeals for the Sixth Circuit:

Come now the Respondents above named, and for answer to the petition of the National Labor Relations Board for enforcement of its Order in consolidated cases numbered 9-CB-327 and 9-CB-328, respectfully show:

1.

Paragraphs (1) and (2) of the petition are admitted.

2.

Paragraph (3) requires no answer of Respondents.

3.

For further answer, Respondents show that, without waiving any objection which they may have to the legality [fol. D] or propriety of the Board's Order in cases Nos. 9-CB-327 and 9-CB-328, and without admitting to any unfair labor practice but in order to avoid further litigation and expense to themselves and the United States, they have fully complied with such Order and with the posting and other affirmative requirements thereof. The correspondence and other evidence of such compliance in the files of the National Labor Relations Board, and in the files of the office of its Ninth Region, in this case are properly a part of, and should be included in, the transcript of the record of this case in this Court.

Since Respondents have complied with the posting and other affirmative provisions of the Board's Order, they should not be required by this Court to repeat such com-

pliance, as to require a repetition thereof would be abusive and punitive and would in no manner tend to effectuate the policies of the Act further than has already been accomplished.

4.

Since the Respondents have fully complied with the provisions of the Board's Order and as there is no evidence in the record that the alleged unfair labor practices (the commission of which is not hereby admitted) are part of a repeated or customary course of conduct or that there is any threat or probability that such alleged unfair labor practices will be repeated, there is no occasion or necessity for such Order to be enforced by Court decree and a decree of enforcement would not tend in any manner to effectuate further the policies of the Act and would only be punitive to Respondents and abusive of their good faith in complying with the Board's Order.

[fol. E] 5.

Further answering said petition, Respondents except to the Board's Decision and Order as follows:

(a) To paragraph numbered "1" of the Board's Decision insofar as said paragraph departs from, extends, or infers more than is found in, the findings of the Trial Examiner, as such departure, extension, or inference is without substantial evidence in the record as a whole to support it.

(b) To paragraph numbered "2" of the Board's Decision insofar as said paragraph extends, or varies from, the findings of the Trial Examiner as such extension or variance is without substantial evidence in the record as a whole to support it.

(c) To the finding in paragraph numbered "2" of the Board's Decision that the Respondents violated Section 8(b)(1)(a) of the Act by all, or any one, of the instances referred to in paragraph numbered "1" of its Decision, as such finding is illegal, contrary to the law and is without substantial evidence in the record as a whole to support it.

(d) To the holding, or implication, in paragraph numbered "2" of the Board's Decision that supervisory employees who perform the non-supervisory work of striking employees during a strike thereby become "employees" within the meaning of the Act, and particularly within the meaning of Sections 7 (29 USC, Sec. 157) and 8(b) (1) (A) (29 USC, Sec. 158 (b) (1) (A)) of the Act, as such holding, or implication, is illegal and contrary to law and is without substantial evidence in the record as a whole to support it.

[fol. F] (e) To the holding in paragraph numbered "2" and in footnote "2" of the Board's Decision that testimony of employees that they were not, in fact, restrained or coerced, is irrelevant to the issue of whether or not they were restrained or coerced, as such holding is contrary to law.

(f) To the vague and uncertain holding in the next to the last paragraph of paragraph numbered "2" (it does not appear whether the Board was ruling upon a matter of law or was exercising a discretion upon a matter of fact) to the effect that provocation of employees may not be a defense or matter in mitigation and excuse, of acts alleged to have been committed by those same employees, as such holding is contrary to law and is also (if a matter of fact) contrary to the substantial evidence in the record as a whole in this case.

(g) To the holding in paragraph numbered "3" of the Board's Decision that "evidence and findings that the Company may also have unlawfully interfered with these employee rights are irrelevant," as such holding is contrary to the law.

(h) To the criticism of the Trial Examiner indulged in Paragraph numbered "3" of the Board's Decision and to the implication that the Trial Examiner may not extend the issues in the case to cover bona fide and legal defenses raised by the Respondents to the complaint against them, as such holding is contrary to law and deprives Respondents of their right to raise, prove and urge such defenses.

(i) To the summary, superficial and cavalier manner in which the Board handled and disposed of the complicated issues in this case in its Decision, summarily and carelessly in vague and general terms discounting the findings of the [fol. G] Trial Examiner, who viewed and heard the witnesses and was the trier of the facts, without making any clear or definitive explanation of why the Trial Examiner's findings were not supported by substantial evidence or were contrary to the substantial evidence, and perfunctorially and carelessly announcing vague and uncertain principles of law, so that the appearance of partiality, so piously denounced by the Board, rests upon the Board itself by the very terms of its own Order.

(j) To paragraph numbered "1" of the Board's Order, and especially to the words "or any other employer" in such paragraph, as there is no evidence in the record that the employees of any other employer (except while in the employ of Ohio Consolidated and therefore its employees) were in any manner affected by the facts of this case, and as there is no evidence of any repeated course or pattern of conduct on the part of Respondents directed toward the employees of any other employer or of employers generally, so that the Order of the Board, because of these words, goes beyond the facts of the case and is unauthorized by any substantial evidence in the record and is therefore punitive, rather than remedial, in its scope.

6.

The foregoing allegations and exceptions sufficiently apprise the Court and the Board of the scope of the issues and of the parts of the record which must be certified to the Court. Respondents will elaborate upon such allegations and exceptions with greater particularity in their Brief.

Wherefore, Respondents pray that the Decision and Order of the Board be vacated and set aside and that the [fol. H] Board be directed to enter a Decision and Order adopting and affirming the findings and recommendations

of the Trial Examiner; or that the Board's Decision and Order be modified as the Court may deem mete and proper in the premises; and Respondents further pray that the Board's Order be denied enforcement.

Respectfully submitted,

Kane and Koons, Charles V. Koons, 1331 G Street, N. W., Washington 5, D. C.; Adair and Goldthwaite, By J. R. Goldthwaite, Jr., Attorneys for Respondents, 1431 Candler Building, Atlanta 3, Georgia.

[fol. 2]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERMEDIATE REPORT—April 11, 1957

Statement of the Case

Charges having been duly filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and answers having been filed by the abovenamed Respondents, a hearing involving allegations of unfair labor practices in violation of Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was held in Portsmouth, Ohio, on various dates between December 11, 1956, and January 29, 1957, before the undersigned Trial Examiner.

As to the unfair labor practices, the complaint alleges and the answers deny that the Respondents: (1) in the course of a strike against the Charging Party, and by and through their officers, agents, and representatives, engaged in acts of violence and threatened violence against supervisors and employees of the Charging Party, and (2) thereby restrained and coerced employees of the Charging Party in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the

issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. Arguments were waived. Briefs have been received from all parties, and have been carefully considered in the preparation of this report.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

Findings of Fact

I. The business of the Charging Party

Ohio Consolidated Telephone Company, a public utility, is now and at all times material hereto has been engaged in the business of providing local and long distance tele- [fol. 3] phone service to subscribers in 40 communities in the State of Ohio. In the course and conduct of its business during the year ending December 31, 1955, it received for its telephone services within and without the State of Ohio total revenues of more than $4,900,000.

The Charging Party is engaged in commerce within the meaning of the Act.

II. The labor organizations involved

Communications Workers of America, AFL-CIO, and Local 4372, Communications Workers of America, AFL-CIO, are labor organizations admitting to membership employees of the Charging Party.

III. The alleged unfair labor practices

A. Prefatory statement

In his complaint, General Counsel confines allegations of unfair labor practices to certain conduct on the part of strikers during a long and bitter strike of more than 200 employees against the Ohio Consolidated Telephone Company—a strike which, on January 29, 1957, when the hearing closed, had been continuous in and near Portsmouth, Ohio, since July 14, 1956. At the hearing, in presenting their case and in opposing the proffer of much defense evi-

dence, the 2 counsel for General Counsel hewed strictly to the literal boundaries of this alleged conduct, arguing that all events of the strike not attacked by the complaint as illegal were irrelevant and immaterial. This position is maintained in their brief.

Were the Trial Examiner to be guided wholly by General Counsel's wishes, he might well be led to a conclusion as tangential to its context as that of the fourth blind man in the ancient Hindu tale, who declared that an elephant was like a whip, since his hands had grasped only its tail.[2] [fol. 4] The questions in this case are involved. Their solutions are not to be easily and quickly reached. It is the opinion of the Trial Examiner, who during the month-long hearing listened to the testimony of many scores of witnesses, liberally larded by arguments of all counsel, that

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[2] This Sanskrit tale is perhaps most simply retold by Bertha Metzer, in Picture Tales from India (Frederick A. Stokes Co., 1942). It reads: Once there were four men who had been blind from birth. As they went about the city together, they were always quarreling about this or that, and each one always insisted that he alone was right. And the people became very tired of listening to their endless quarrels.

One day a man who was a great joker gathered a crowd about him and said to the blind men, "I have heard your wisdom. Which of you is the wisest?

"I am!" "No, I am!" they cried, and began one of their deafening quarrels.

When their voices gave out, the joker said, "I am sure you are all very wise, but let us prove which of you is the wisest. There is approaching us a strange creature called the elephant. Each of you shall tell me what he is like."

As the elephant passed, the four men extended their hands. The first man felt the trunk and cried, "The elephant is like a huge snake."

The second man felt the leg and said, "No! The elephant is like a huge tree."

The third man felt the elephant's body and cried, "No, no. The elephant is like a huge granary."

The fourth man seized hold of the tail, and cried, "No, no, no! You are all wrong! The elephant is like a whip."

The people laughed heartily, but an old man who was noted for his wisdom said, "Thus it is with all men who see only part of the truth."

to attain the most probable truth and reasonableness of the factual events at issue and their legal effects, consideration of the context of such events is necessary, and only arbitrarily may be ignored.

The chief ultimate legal conclusion sought by General Counsel may be defined, of course, in comparatively simple terms. It is: by being responsible for certain misconduct of some strikers the Union coercively deprived all strikers of their right (guaranteed by Section 7 of the Act) not to strike. Proceeding backward from this ultimate focal point, however, leads into a number of more perplexing alleyways of appraisal.

For example, as found in detail below, all of the alleged misconduct was directed against supervisors who, as General Counsel concedes, have no rights under Section 7 of the Act. There were no employee replacements, at any time during this period. And only one striking employee abandoned the strike and returned to work. As to that one employee, there is not the slightest bit of evidence [fol. 5] that any attempt, by word or deed, was made to prevent her from working. Thus the record lacks both pleadings and evidence that any nonstriking employee of the Charging Party was directly coerced, or was the immediate victim of any misconduct which might be construed as coercive. Yet during the hearing General Counsel voiced the contention that by engaging in misconduct against supervisors the strikers actually intimidated and coerced themselves.[3] Only by route of the most reasonable inference, it appears to the Trial Examiner, may the conclusion sought by General Counsel in the foregoing example be reached. And pursuant (sic) of the most reasonable inference calls for the exploration of all possible inferences,

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[3] At page 323 of the transcript there occurred the following colloquy:

> Trial Examiner: By restraining foremen they restrained themselves, then, is that it?
>
> Mr. Dooley: By engaging in conduct of a coercive nature directed at people who were working for the company, striking employees in a group engaging in this, if you want to say they restrained themselves, yes.

which necessarily requires the ascertainment and inspection of many surrounding facts and events.[4]

Both as potential grounds for inference and as factors bearing upon the credibility of witnesses (essential to the determination as to whether or not certain alleged acts of misconduct really took place), a number of concurrent events will be considered by the Trial Examiner, despite General Counsel's claim that they are irrelevant.

As briefly as possible, therefore, such factual background is now set forth.

B. Background

1. The strike in general

Until July 1956, and for the preceding 14 years of contractual relation between the Respondent Unions and the [fol. 6] Ohio Consolidated, there had never been a strike of more than a few hours duration. That long and peaceful relationship came to an abrupt end, however, upon assumption of control of Ohio Consolidated by General Telephone Company of Ohio and the expiration of the current contract in July 1956.[5]

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[4] The inference sought is not directly apparent, as in the case of the effect of a coercive act on the part of a supervisor against an employee. A threat by a supervisor to discharge an employee because of his union activities is, per se, illegal. A threat by an employee against a supervisor may be "unprotected"—that is, the employee is not protected by the Act against discharge, but it is not, per se, illegal under the Act.

[5] Although the record does not reveal the precise date when control of Ohio Consolidated passed into the hands of General, it appears to have been not long before expiration of the 1956 contract. The following is quoted from the August 7, 1956, issue of The Portsmouth Times, introduced into evidence by General Counsel: "New York (AP) Shareowners of General Telephone Corp. and Continental Telephone Co. approved a merger of the two companies at special meetings today . . . Last fall . . . General acquired 50.49 per cent of the common stock of Continental. Continental is a telephone holding company . . . One of its companies is the Ohio Consolidated Telephone Co. with 39 exchanges in Ohio . . . The merger was recommended by directors of each company on June 18."

Negotiations failed to produce a new contract. Why they failed is not an issue in this case. On July 9 members of Local 4372 met and voted unanimously to strike. The strike began on July 14 and, as noted above, from that date until the close of the hearing all employees in the striking unit of about 210, except 1, remained on strike. The strike action of the Local was approved and financially supported by its parent organization, the CWA.

For the first couple of weeks no serious event marred the conduct of peaceful picketing. (Maynard Matz, district manager, admitted that "during the first two weeks of the strike" there had been no difficulty in getting into and out of the exchanges.) In the last part of July, however, the company began bringing in "supervisors" from outside the Portsmouth area—some of them employed by other companies of the General system. (The work, if any, performed by these outside "supervisors" will be described later in this report.)

Portsmouth public sympathy and support of the strikers, a majority of whom were women of long service with the company in this community, became aroused. The population of Scioto County, which includes the city of Portsmouth, was estimated at the hearing by a witness for General Counsel as approximately 90,000.[6] It is undisputed [fol. 7] that in the early days of the strike the Portsmouth CIO Council recorded its support of the strike, and that in this area there are about 11,300 AFL-CIO members. It is likewise undisputed that financial support was contributed to the striking local of CWA by some 25 specifically named labor organizations of that locality.

High officials of the State of Ohio sought to obtain settlement of the strike. It is undisputed that at a meeting on October 15, 1956, of officials of both the Union and the Ohio Consolidated, Governor Frank J. Lausche (now a member of the U. S. Senate), urged the parties to consider submitting all issues of the strike to arbitration. The Union promptly agreed to the suggestion, expressing will-

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[6] The witness was H. I. Bassier, business manager of The Portsmouth Times.

ingness to submit all issues to arbitration "by anyone, any third person, the Governor or anyone selected by the Governor, or anyone selected by the Industrial Commission of Ohio."[7] Officials of Ohio Consolidated, however, refused to submit matters to arbitration.

2. Violence patterns

Since the bulk of General Counsel's complaint is concerned with allegations of violence or threats of violence against supervisors and by strikers, and because the Union urges in effect that violence, if such occurred, was instigated by the supervisors themselves, the Trial Examiner believes to be relevant not only all facts bearing upon specific incidents, but an apparent policy pattern of violence established by the Charging Party itself.

Chronologically, the first act of threatened violence was visited upon a striker by workmen of an outside contractor while under supervision of Ohio Consolidated supervisors, and the incident was later not only tacitly approved by the General Counsel of the Ohio Consolidated but also used by him to voice a threat against the same striker. In substance, the incident was as follows.[8] Shortly after July 14, [fol. 8] and to repair the first "cable slashing" after the strike began, Supervisors Matz, Kern and Conley were overseeing certain excavation work being performed by a crew of Negroes, in a Portsmouth public alley. Upon being relieved of picket duty at a nearby exchange, Farrell Lykins went down this alley to take pictures. He was alone. At first no one gave him attention, and then someone mentioned that he was a striker. Thereupon one worker threatened him with a pick axe handle and a chunk

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[7] The quotations are from the uncontradicted testimony of Attorney Eisnaugle, who was present at the meeting called by Governor Lausche.

[8] The description of the incident is based upon the credible testimony of Farrell Lykins, a telephone tester employed by the Charging Party for 13 years. That the incident occurred is not denied by supervisors Matz and Kern, although Matz said he was across the street at the time and Kern's version differs in some respects. The third supervisor present, Conley, was not called as a witness.

of concrete while others surrounded him. The supervisors merely stood by watching. Lykins called out for assistance to a passing citizen and with him finally left the alley. On August 17, while Lykins was on picket duty at another exchange, it is undisputed that Attorney Sidney P. Griffith, general counsel of Ohio Consolidated, in the presence of Vice-President Cole, warned Lykins "I'll get those colored people down from the north end to chase you around with pick axe handles again."

On July 24, shortly after the first incident as related by Lykins, the Ohio Consolidated began congregating at the scenes of cable repairs, an increasing number of individuals not previously employed, but brought in from various parts of the country. District Manager Matz testified all these were "supervisors." The testimony of strikers, undisputed, is to the effect that many of these strangers to the area, or "outsiders," did no work at the cable repair sites. Striking linemen of long experience testified without contradiction that such repairs required but two men, yet on many such jobs, as described below, there would be a dozen or more so-called "supervisors" standing around the job site. Further support for the conclusion that these "outsiders" were called in by the Charging Party for purposes other than actually performing the work previously done by the strikers is found in the undisputed testimony of certain professional "investigators," hired by the company under circumstances fully [fol. 9] described in the next section, to the effect that officials of the telephone company urged at least two of them to pose as real linemen and join the crews of "outsiders" and supervisors.

It is well established, by the testimony not only of strikers but also of District Manager Matz, that the appearance of these "outsiders" was followed by increasing resentment, displayed in various ways. on the part of many Portsmouth citizens who were not employees of the telephone company. Public feeling increased to a culminating point on October 15 when, according to one of General Counsel's witnesses, Erma Lou Callehan, "the strikers and everybody else in Portsmouth, I think, went to the exchanges," and then came to the nearby motel

where a number of secretaries to officials, supervisors and "outsiders" were staying. Callehan said, succinctly, "That's why we left" Portsmouth, on October 15.[9]

3. The company's hiring of investigators

During the latter part of August, well within the period of alleged misconduct by strikers, it is undisputed that Clare Williams, president of the Ohio Consolidated, solicited and obtained the services of Charles W. Crouthers, then employed by the William J. Burns International Detective Agency, to come to Portsmouth, in his private capacity and with other operatives, to perform investigation services relating to the strike. Credible testimony of these investigators establishes that upon their arrival in Portsmouth they were urged by company officials to break the strike by removing from such strike, in any manner they saw fit, four named strike leaders. The investigators failed to assault the strikers, and they were within a few days dismissed, and at the time of the hearing had not been paid for their services. A summary of the material facts follows.

In mid-August Crouthers, then an investigator and contract solicitor for the Burns Agency, met with Williams [fol. 10] and Griffith, the latter previously identified as counsel for the telephone company, in Griffith's Columbus, Ohio, office. A contract was signed, under terms of which the Burns Agency would furnish the telephone company with agents to investigate acts of arson, vandalism and sabotage against the company. The contract was forwarded to the Burns' Pittsburg office. An office official in Pittsburg, however, under Crouthers' name wired the telephone company that because of manpower shortage the agreement could not be fulfilled. Upon receipt of this wire, Williams telephoned directly to Crouthers, at the latter's home, and prevailed upon him to take the assign-

[9] In passing, it may be well at this point to note that as to these October 15 events, described by Callehan, although the complaint as issued contained specific allegations, such allegations were stricken upon motion by General Counsel, at the conclusion of his case.

ment on his own. Crouthers then returned to Columbus, and orally agreed with Griffith to obtain investigators for the purpose set out in the cancelled contract with Burns, and at the same financial terms. It was further agreed that Griffith would pay him for such services, because, as Crouthers testified without contradiction, "they did not want no record of the Telephone Company paying me, and Mr. Griffith, representing them, being their attorney, of course would be the one to pay me."

At 3 or 4 o'clock of the Saturday morning before Labor Day, Crouthers arrived in Portsmouth with four investigators he had hired, including one regularly employed guard of the Burns Agency. They were met at a Portsmouth motel, through prearrangement, by three management officials: Public Relations Director Zachman (for both Ohio Consolidated and General), Industrial Relations Director Frank Lennberg, and either General Plant Manager Ferris Pratt or Division Manager Edward C. Kimball.[10] In addition to receiving instructions regarding the [fol. 11] investigation of cable-cutting, the investigators were asked to remove four of the strike leaders from further strike activity in any manner they saw fit—by running them down with an automobile if necessary. The four strikers named were Hipple, Bush, Shepherd and Cook. The officials identified them by displaying photographs previously taken. The investigators neither agreed nor disagreed to engage in such acts of violence. They met the next night with Kimball and General Manager Purpura,

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[10] Two investigators testified that Pratt was the third official present, three said it was Kimball. As noted later, Kimball was the only management representative to testify about this matter at all, and he said that at the time of the meeting in Portsmouth he was in Griffith's Columbus office. Although, for reasons fully outlined, the Trial Examiner can place small reliance upon Kimball's testimony, and there is no explanation in the record for his being in Griffith's legal office at 3 or 4 o'clock in the morning, it may well be that, since it was their first meeting with such officials, the investigators confused the identity of Kimball and Pratt. As further noted, above, Kimball admitted meeting with them the following night. In any event, there is no dispute that company officials met the investigators when they arrived in Portsmouth.

and were again urged to dispose of the four strike leaders. Also on this occasion they were instructed to mingle with the crowd the next day, in the Labor Day parade, and to participate in, if it occurred, a rumored wrecking of the union float.

At the Saturday morning meeting, Zachman urged two of the investigators (Bice and Kerr), because of their size, to pose as telephone linemen. The two declined, Kerr stating that he "didn't want to be known" and had better not "get tangled up in that."

Crouthers had to leave Portsmouth the evening of Labor Day, apparently to return to his job with Burns. Investigators Tindal, Kerr and Bise remained and met with Kimball and Griffith the next night, September 4. In substance the investigators were told by the officials that since they had not unearthed information of legal value and had not gotten the four strikers "out of the picture," according to Tindal's testimony, their services were no longer needed. On this occasion Kimball told them that had they been able to "do this one thing, that the negotiations and the strike and everything would be disintegrated entirely," as had happened during a Portsmouth cab strike when one of the leaders was "out of the picture and the strike collapsed." According to Kimball's testimony, the investigations were hired after "discussion in policy meetings," that he concurred, and that there "was $125.00 paid," Purpura paying $100 and Zachman $25, as expenses.

[fol. 12] According to Crouthers, his attorney has unsuccessfully sought to receive further payment on his bill, which he said amounted to more than $300.[11]

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[11] The foregoing findings are based upon testimony of the five investigators, in major part undisputed. That their testimony should contain minor inconsistencies in identifying who was present or who said what on each of several occasions, the Trial Examiner considers to be put normal when a series of witnesses testify about a series of past events. Had their testimony coincided in each minute detail, suspicion would be reasonable that it was the recital of a lesson rehearsed. General Counsel offered no witness to rebut the Union's testimony on this matter. Counsel for the company brought forward none of the high officials named by the investigators, except Division Manager Kimball. In substance Kimball

[fol. 13] Contrary to the position stoutly maintained by counsel for General Counsel and counsel for the Charging Party, the Trial Examiner believes that this factor of company policy must be considered carefully not only because

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denied being present at the first meeting with Crouthers and his men, denied having given any instructions at the second meeting about disposing of the four strike leaders, and denied that at the final meeting the investigators were told they were being dismissed in part because they had failed to carry out such instructions. The Trial Examiner does not credit his denials as to the second and final meetings. As noted above, it may be that Kimball was not present at the first meeting, and that the third official was Pratt, who did not testify. In nearly 20 years of conducting NLRB hearings, and observing many hundreds of witnesses, the Trial Examiner has seldom seen one who displayed more discomfiture on the stand than Kimball. He sat throughout his testimony slumped in the witness box, directly facing the Trial Examiner but keeping his eyes averted—not only from the Trial Examiner, but also, most of the time, from whichever counsel was questioning him. Whether his unease stemmed from the fact that he was the only company official to be called on this point and placed under oath, from the nature of the testimony he was giving, or from some other cause, the Trial Examiner does not further speculate. His demeanor, however, lacked the convincing quality of forthrightness which custom looks for in an honest, even if mistaken, witness. The only other witness called by the company on this matter was Erma Lou Callehan, who identified herself as secretary not only to President Williams, but also to Kimball, Lennberg, and Zachman. She was present, as the investigators said, at their final meeting with Kimball and Griffith, and testified that she heard neither official tell the investigators that they were dismissed for failing to carry out instructions. Although counsel for the company stated, on the record, that he had the notes which Callehan made on September 4, he did not offer them in evidence, nor properly identify them. The mere existence of such notes permits no inference either as to their completeness or accuracy. It is a reasonable conclusion of fact, that neither her testimony nor Kimball's has any support in the record from stenographic notes she took on September 4. It is likewise reasonably inferrable that, had those notes contained competent support, they would have been identified and offered by the company. Other factors support the conclusion that the testimony in general of the investigators is trustworthy. Counsel for the company made no claim that Williams, Lennberg, Zachman, Pratt or Griffith were unavailable as witnesses. In fact he stated for the record, before calling Kimball, that he did not "intend to dignify" the proceedings by "calling every representative of the company who was named by these imposters". It may well be the opinion of

it is relevant to the general question as to whether or not the Board should exercise its authority, as noted by the U. S. Supreme Court,[12] and dismiss the complaint on the ground that the company's charges are so related to its own conspiracy to engage in illegal conduct as to constitute "an abuse of the Board's processes," but also because it is relevant to the question as to whether or not any or all of the incidents of alleged misconduct on the part of strikers were actually instigated by company supervisors and "outsiders."

4. Publicity

Both General Counsel and counsel for the Charging Party rely mainly upon the Board's theory in W. T. Smith Lumber Company (116 NLRB No. 64), issued on August 9, 1956, shortly after the strike began in this case. During the second day of the hearing, counsel for the company declared, "it is . . . basic to this case." The Board's decision will be quoted in a later section. At this point only that part is referred to in which the Board, adopting the Trial Examiner's finding that strikers were coerced by "learning of violent conduct by a union against supervisors," ordered the union to cease and desist from engaging in certain conduct "under such circumstances as to insure that" striking employees "will learn of it."

Whether or not the one event followed as the direct result of the other, it is a historical fact that after the publication of the Smith decision, the Charging Party made certain that nonparticipating strikers should learn of incidents of claimed misconduct on the part of their fellow-

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counsel that the calling of rebuttal witnesses lacks dignity, and such opinion is respected. Failure to call such witnesses, however, leaving testimony uncontradicted, is the responsibility of counsel, not the Trial Examiner. Finally, it is undisputed that shortly after the investigators left town, at least 3 of the 4 strike leaders named —Hipple, Bush and Cook, were sent notices of their dismissal from the company payroll.

[12] N. L. R. B. v. Indiana & Michigan Electric Co., 318 U. S. 9, 18, 19.

strikers. In September the company provided a national publication—"Business Week," with photographs taken by its own supervisors—one of which bears the surprising legend "Phone Company supervisor took pictures at right [fol. 14] of pickets preparing to attack phone repair crew." The telephone company had reprints of the article made and, according to its own district manager, distributed them with its telephone bills.

In the local courts the telephone company brought many charges against strikers, and subpoenaed many strikers to attend the court proceedings, although some were not called upon to testify. Neither General Counsel nor counsel for the company challenged the oral contention of counsel for the Union: "these people were subpoenaed, every member subpoenaed by the Company and made to sit in that court room through the entire proceedings, for one purpose only, for this hearing here today, to be able to say that they heard it." Indeed, General Counsel took the position at that point, that even if strikers heard of misconduct "under duress," his theory would still hold.[13]

Later during the hearing, General Counsel extended his theory to a more remote area, as is shown in the following colloquy; which occurred after General Counsel had admitted that certain charges had been dismissed by the court upon motion without hearing:

> Trial Examiner: Well, let me ask this: What is your position as to the mere filing of this information, or charge?
>
> Mr. Dooley: Well, the filing of it, and arraignment, the hearing which was dismissed on the motion for a reason other than its notoriety to the charge, those reasons being introduced—
>
> Trial Examiner: Which may or may not have been completely false.

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[13] Trial Examiner: So far as what General Counsel is getting at, the hearing is the important thing, and even, if it was under duress that they heard it, his theory would still hold. Isn't that correct?
Mr. Dooley: Yes, sir.

Mr. Dooley: Well, of course, that's true; if they may be still pending, they may not be false.

* * *

Trial Examiner: Now, the only reason for bringing in any court action, as I understand it, is that you [fol. 15] wish to establish that, inferentially, at least, and in such cases as you establish that strikers were present, that such strikers heard of the event from the testimony given by, in this case, Casteel, in open court. And that again, inferentially, having heard about it, they perhaps were deterred from leaving the strike and going back to work.

Mr. Dooley: Well, this may not prove conclusively that people knew he filed the charge, but it is a form of attendant notoriety which, I think, it is relevant to show.

Trial Examiner: It isn't the filing of charges, as I understand your position, that is the point of issue, it's the event itself, where employees heard about it since they weren't present, but heard about it by means of the court action?

Mr. Dooley: Well, we also contend that the notoriety involved, such as it might be, even in the sole filing of criminal charges, is a form of attendant notoriety which it is relevant to show.

A summary of contextual factors, then, which the Trial Examiner believes possess relevant bearing upon issues raised by General Counsel, include: (1) the long history of peaceful bargaining before assumption of control by General Telephone; (2) the adamant refusal of the Charging Party, when requested by the Governor of Ohio, to submit strike issues to arbitration; (3) the employment of "outsiders" to be present at job sites without working; (4) the hiring of professional investigators for the purpose, in part, of "removing" certain strike leaders; and (5) the efforts described above to insure that all strikers would hear of claimed incidents of violence by some strikers.

The Trial Examiner now turns to the specific acts of alleged misconduct.

[fol. 16] C. Incidents of alleged misconduct

1. Following Matz to his home, July 18

The first incident, claimed by General Counsel to be coercive, took place on July 18. It is so trivial as to deserve scant comment.

District Manager Matz, accompanied by Construction Foreman Kerns, drove a company truck to his home about 5 o'clock that evening. After he got into his house, he observed a number of strikers, in cars, drive up and park near his home. Some of them got out, and gathered in a group in the driveway of the house next door. Finally Matz went out, approached William Hipple, one of the strike directors, and asked him what he wanted. According to Matz, Hipple made no reply. He then told Hipple, also according to his own testimony, that he "wished they would confine the strike to the Company buildings," and then went back into the house. Although Matz claimed there were 20 to 25 strikers there, as a witness he could name but 8. There was no violence or threat of violence.

Hipple readily admitted having followed Matz home, with 8 or 10 others, although he placed the occasion as a week later. He explained that they went out there because they had an agreement with Matz—and this is uncontradicted by the District Manager—that the supervisors would not take the trucks "home and keep them on the streets" where they might become damaged. This latter point was established by General Counsel, while cross-examining Hipple.

The Trial Examiner discerns nothing in this incident to support the specific allegation of the complaint to the effect that Hipple and others followed "supervisory personnel of the Employer in superior inimical numbers" and thereby "restrained and coerced" supervisors.[14]

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[14] Although the incident is not specifically alleged in the complaint, Matz testified that when he and Kerns left his home that evening, they were followed by the same strikers to a parking lot of one of the exchanges, and when they arrived were blocked by the same strikers and others from entering the lot for about 5 minutes. He gave no reasonable explanation as to how he could be both followed and preceded by the same strikers, nor did he provide

[fol. 17] 2. Blocking company truck, July 19

The details of Matz' testimony regarding this incident are uncontradicted. That day he and Kerns were about to leave the company's parking lot at one of the exchanges, in a company truck, when 4 or 5 strikers who had been picketing the exchange entrance, ran down and stood in front of the exit gate. "We kept inching the truck forward and they kept walking right up against the bumper," said Matz. Supervisor Beasley, inside the parking lot fence, began taking pictures of the pickets. Picket Captain Russell Cook remarked to Beasley, according to Matz' undisputed (but delicately edited) testimony, "We'll take the camera and jam it" where cameras are not customarily encased. It does not appear that the threat was carried out. For Matz continued, "So he took several pictures, and then went inside, called the police, and the police came and made them let us out."

While this incident, as described by Matz, seems to the Trial Examiner to be relatively mild, capably cared for by local police, and inconsistent with Matz' later testimony, previously noted, that he had no trouble getting into or out of the exchanges during the first 2 weeks of the strike, in the absence of any refutation the Trial Examiner concludes that it happened, and reasonably is embraced within the allegation of the complaint to the effect that supervisors' "ingress and egress . . . to and from the Employer's premises" were "impeded" on this occasion by the pickets.

3. Lincoln and Robinson incident, July 24

As in the cases of the two previously described incidents, Matz was the only supervisor to testify regarding an occurrence in a public alley near Lincoln and Robinson Streets, in Portsmouth, on July 24, Matz and three other supervisors were repairing a cable at this location. It is undisputed that this was the first occasion when "out-

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details as to precisely who or in what manner he was "blocked". The Trial Examiner, from this confusing and general testimony, is unable to find exactly what did happen at the parking lot.

[fol. 18] siders" were brought in by the company, James Casteel and Harold Stratton, from Bryan, Ohio, and both employed by the General Telephone, Casteel as district plant superintendent and Stratton as plant engineer.

According to Matz' own testimony, he and the other supervisors worked peaceably at their job all the morning, from 9 o'clock until after 12 o'clock, with pickets 50 feet away, on the main street. So far as his testimony reveals, the supervisors were not interfered with, or even spoken to, for all this period. At about 12:15, he said a "crowd" of shoe workers began to gather, some five carloads of them. This crowd, Matz continued, containing some pickets, came down the alley, kicked tool boxes, took pictures and threw the flash bulbs at the supervisors, and called them "scabs" and other names. One shoe worker, he said, told him, "we are going to hang you in your front yard tonight," and strikers Russell Cook and Raymond Martin added, respectively, "We'll do worse than that to that son-of-a-bitch," and "I'd love to catch him out by himself sometime."

Even while on direct examination, Matz tempered his testimony measurably. Although he claimed there were 25 company pickets there, he could name but 10. When asked to identify who called him names, he hedged, and said, "Well, calling me directly, I couldn't say; and only Cook addressed his remarks to me. . . . When they spoke they would speak more of less to one another . . . "

Their work, however, was not interrupted, for as Matz testified, they worked "continuously" from "9 o'clock in the morning until about 3:00 in the afternoon."

Five of the ten strikers said by Matz to have been at this location readily admitted the fact. According to the undisputed testimony of one of the strike directors, Virgil Pierce, when they came to picket the job they found "out of town people" there for the first time since the strike began. He and another strike director, Jack Keyser, came down the alley to the telephone pole and asked one of the strangers, "Mr., do you know there is a strike going on out here?" Receiving no answer, the two left the alley. He admitted that a considerable number of people, not strikers [fol. 19] and there without any request on his part or that

of the Union, gathered in the vicinity and went down the alley. Pierce's testimony, in general, is supported by that of Keyser, Picket Captain Russell Cook, and strikers Richard Kalb and Raymond Martin. All denied making any threats against the supervisors. Keyser admitted taking pictures of the strangers with a flash camera, and that when he "hit the trip release" the bulbs spun out on the ground, but said he released them with no intent to hit anyone. Russell Cook flatly denied making the implied threat accredited to him by Matz, as did Martin.

The Trial Examiner does not credit Matz' unsupported testimony as to this incident. His retractions and failure to be specific, while on direct examination, deprive it of substantial weight. Nor is the evidence sufficient to establish that the "crowd" of citizens who came there were present at the instigation of the strikers or the Union. There is no doubt, as found heretofore, that public sympathy in large part was with the strikers, but absent a more convincing circumstance than mere presence on a public street, it cannot be reasonably held that the Union is responsible for conduct of all citizens of Portsmouth.

On this occasion, however, occurred an act of violence against a striker, and by a supervisor. According to the credible testimony of Richard Kalb, when he proceeded down the alley with his picket sign, as the supervisors were leaving, Casteel ran into him with the company truck, causing injuries which hospital X-rays showed was a "compressed vertebra." Casteel himself admitted the occurrence, and said that Kalb was "more or less just bumped down the road."

In short, the Trial Examiner finds the credible evidence insufficient to warrant a finding in the language of the complaint: to the effect that on July 24, at this location, union agents engaged in "cursing, harrassing, threatening, and interfering with the work of supervisory personnel of the Employer."

On the contrary, however, it is found that the Charging Party, Ohio Consolidated, by the above-described conduct [fol. 20] of District Plant Superintendent Casteel of General Telephone, engaged in the first act of violence after the beginning of the strike.

4. Trouble at Sciotoville exchange, July 29, 2 p. m.

In addition to "outsiders" brought in for cable repair jobs at varying sites, soon after the strike began General Telephone sent into the Portsmouth area a number of supervisors to be at the telephone exchanges.

According to the direct examination of Oscar Newman, equipment supervisor for Ohio Consolidated, he and Station Supervisor William Meyers, during the afternoon of July 29 escorted Pat Bauer, a General Telephone supervisor, to the Sciotoville exchange, which is in the Portsmouth area. According to Newman—who alone for management testified about the incident—as the 3 approached the exchange they were met by 2 picket captains, Russell Cook and Robert Johnson, who told them that although he and Meyers could go in, Mrs. Bauer could not. Vice-President Cole came up, and the picket captains told him the same—that Bauer could not go in. Newman further said that Cole called the police, that police arrived and talked with both the strikers and the officials of the company. He concluded, "they (the police) couldn't help us, so we had to leave." On cross-examination Newman admitted that Bauer was a chief operator for General and he did not "think" she was a supervisor for Ohio Consolidated, nor could he remember whether or not this was her first trip into the Portsmouth area. He further admitted that the picket captains made no attempt to use force, and that he and other supervisors went in and out as they pleased. Nor is there any testimony to the effect that force was threatened by either the captains or the pickets.

Although both Cook and Johnson were witnesses, neither was questioned by any counsel about this specific incident.

On the basis of Newman's testimony alone the Trial Examiner concludes and finds the evidence insufficient to [fol. 21] support a finding within the terms of the complaint's allegation. There was clearly no physical prevention, nor threat of physical prevention, of supervisors from entering the exchange.

5. More trouble at same exchange, 8 p. m.

General Telephone's traveling chief operator, Pat Bauer, was brought back to the same exchange that evening, this time by Glen Evans, revenue accountant supervisor for the Ohio Consolidated, and Zachman, previously identified as public relations director for both companies. As in the afternoon, they were joined at the exchange by Vice-President Cole. Only Evans, for management, testified about the evening incident although, as the record shows, Cole was in the hearing room while Evans testified.

In substance, Evans testified as follows. He and Pat Bauer walked to the exchange door, where "there were three pickets standing shoulder to shoulder at the stairway entrance leading up to the second floor of the exchange . . . they would have had to have moved, or else we would have had to have physically moved them." Cole talked to the pickets, and "they told us that we couldn't get in; so Miss Bauer and I stepped back . . ." Immediately thereafter, in his testimony, however, Evans said he did not hear Cole's conversation with the pickets. Zachman left the group to cross the street, and later police arrived. Evans did not hear what the police said to the pickets, but after the lieutenant read to them from some "document, we went up the stairs."

In contradistinction to Evans' testimony, unsupported by that of any other management witness, pickets Stalder, Shaw and Hicks were questioned at length about the incident. Their account, in substance, is as follows: when the pickets came on duty that night they were informed that a man then in the exchange had kicked a girl picket that morning or the day before. Finally Cole and others arrived. Cole approached Stalder and, according to the latter's undisputed testimony, said "he wanted to take somebody in." Stalder replied, "Well, you can take in your own local [fol. 22] persons, now, but we would rather not no strangers go in." Finally police came, read a letter which "said they would have to go in," and the company people then entered.

In view of Evans' admission that he did not hear Cole's conversation with the pickets, and of the fact that Cole, although plainly available in the hearing room, did not

testify, the Trial Examiner accepts the version of pickets Stalder, Shaw and Hicks. There was no physical prevention of entry; it appears that Cole first raised the question of such entry, and upon receiving the reply that the pickets preferred that no strangers be taken in, merely waited until police arrived and took care of the situation. There was no violence, nor threat of violence.

The Trial Examiner concludes that the credible evidence regarding this incident fails to support the relevant allegations of the complaint.

6. New Boston exchange, July 30

The next day, according to Evans and Newman, both previously identified as company supervisors, they went with Public Relations Director Zachman to the New Boston exchange, also in the Portsmouth area.

As to occurrences upon their arrival, the Trial Examiner does not credit the testimony of Evans, except as it finds support in that of Newman. As the record clearly shows, Evans was verbose, inclined to exaggeration and, as noted in the section immediately above, related conversations which he then said he did not hear. Newman, on the contrary, impressed the Trial Examiner as a witness making an honest effort to reconstruct a past event as he saw it, and not merely to please the company officials present at the hearing.

Newman's account of the incident, in substance, is as follows. He was taking Evans and another supervisor, and supplies, to that exchange, in the early evening of July 30. As they approached the exchange, they were met by pickets Holly Flowers and Eugene Shepherd, about 10 feet from the entrance. These two told him he "wasn't going to take [fol. 23] no one in the New Boston Exchange." Newman told them "these were our people—supervisors," but Flowers insisted that they were not going in. Newman then asked Flowers if he could go in himself, and take the supplies, but Flowers refused to let him in. There was no conversation, he said, with other pickets, and none of the strikers said anything else to the supervisors. When

"we saw we couldn't gain admittance there," Newman concluded, "we left there and went to Sciotoville."

Although Flowers was a witness for the Union, he was questioned neither about the incident nor his refusal to permit Newman and other supervisors entry into the exchange. On the basis of Newman's credible and uncontradicted testimony, therefore, the Trial Examiner concludes and finds that on the above-described occasion pickets "impeded" the company supervisors from entering company property.

7. At Sciotoville, also July 30

Also according to Newman, upon being denied entry at New Boston he drove the same group of supervisors to Sciotoville. As they approached the exchange, they met Strike Director Hipple and Picket Captains Johnson and Frank Farley in front of an adjoining bakery. According to Newman's uncontradicted testimony, Farley "wouldn't let me take the supplies in or any of the personnel." He quoted Farley as saying, "You can't get in. We just ain't going to let you in." Zachman then called the police, who arrived. "We told them the story," Newman said, "and the police told us they couldn't help us." "We left," he concluded.

As in the preceding incident, the Trial Examiner credits Newman's testimony and not that of Evans', except as it finds support in Newman's account and as to the fact that he, himself, eventually went into the exchange.

While there is no credible evidence of actual or threatened violence, it is concluded and found that Farley and other strike officials did impede the entry of company supervisors into the exchange on this occasion.

[fol. 24] 8. Maynard incident, about July 30

Arjayra Maynard, Vice-President Cole's secretary, was a witness immediately following Glen Evans who, as the record shows, testified in Cole's presence. As in the case of Evans, Maynard's vagueness on specific points and apparent exaggeration on general matters raises a good deal

of difficulty in basing upon her testimony any specific findings. She could not recall names, dates and a number of important details.

Although a private secretary, Maynard for the first 2 weeks of the strike was assigned to operating a switchboard at the Sciotoville exchange. So far as her testimony reveals, she had no difficulty in getting to work until the final day of her assignment—a date she could not fix.

On this last morning, she said, she got out of a cab in front of the exchange, and approached its entrance. As she approached two female pickets, Toppins and Ross, stepped ahead of her to the steps. She knew them, she said, and in "a friendly manner" asked, "Don't I get in today?"—or "something to that effect." They replied, "No, we are not supposed to let anyone in."

Thereupon Maynard turned away, went to a telephone and called Evans, who told her to go across the street to a restaurant and wait. She did so. While in the restaurant, she said, three unidentified men also came into the restaurant, sat in a booth and talked, but "I forget now exactly what they said." Eventually a policeman came, and she went into the exchange.

Both Toppins and Ross denied physically preventing Maynard from going into the exchange. It is plain from Maynard's own testimony that she was not threatened, nor actually impeded. Ross' testimony is undisputed that Maynard said "she didn't really care, she would rather be home anyway."

The Trial Examiner finds evidence insufficient to establish a conclusion that Maynard's entry to the exchange on this occasion was, by any misconduct on the part of the two pickets, impeded or prevented.

[fol. 25] 9. Tomato incident, August 3

District Manager Matz and an installation supervisor, Sutherland, were present at this incident. Only Matz testified about it.

A summary of facts, based upon credible testimony, is as follows: On the morning of August 3 Matz and Sutherland arrived in a truck at a parking lot gate of a Portsmouth exchange. Matz found the gate bolted, the bolt bent

so the nut could not easily be removed. (No claim is made, by Matz or General Counsel, that the Union caused the placing or bending of the bolt.) At the time there were a number of union pickets across the street. There is no evidence that they even spoke to Matz when he left the vehicle or inspected the lock. He returned to the truck, and obtained a three-foot long metal boltcutter. As he left the truck he turned toward the strikers, called out the name of one of them, Thornton Gregory, and made a motion as if to throw the boltcutter at him. Gregory promptly threw a tomato at him, and others did the same.[15]

Credible evidence establishes that tomato throwing, whether or not justifiable morally or by local ordinance, followed and was precipitated by Matz' threatening motion. They were not thrown at him while he was attempting entry.

The Trial Examiner finds the evidence insufficient to support the specific allegation of the complaint, to the effect that "supervisory personnel" were prevented from enter-[fol. 26] ing "by cursing, threatening, assaulting, striking and throwing missiles at them."

10. Blaine Matthews' farm, August 13

So far as the record reveals no untoward incident occurred after August 3, when Matz was showered with

[15] The Trial Examiner does not believe Matz' denial that he made the threatening motion with the boltcutter. It is clear, even from his own testimony, that there was no demonstration, even vocal, against him when he arrived, inspected the gate, returned to the truck, and that no fruit was thrown his way until after he turned and, as he said, "faced them," with the boltcutter. Also bearing upon Matz' credibility is the fact, established by General Counsel, that Matz, on the same day of the above occurrence, filed in municipal court charges against Gregory and another striker, claiming that they conducted themselves "in a noisy, rude, insulting, threatening, and disorderly manner" toward him and used "profane and obscene language" toward him. At the time the hearing closed, there had as yet been no hearing on those charges. Before the Trial Examiner, however, Matz testified as to no word, obscene or otherwise, used toward him by any striker. So far as his testimony reveals, he, himself, was the only one who spoke at all during the event, when he said, "You fellows had better behave yourselves."

tomatoes, until August 13, when two more "outsiders" came into the area, George Ghearing and Robert Foster, both being construction supervisors for General Telephone at Jackson, Ohio.

On the morning of August 13 Matz, together with the 2 from Jackson, went to the above-named farm outside the city of Portsmouth to repair a cable, which Matz said had been damaged by an automobile accident. There appears to be no explanation in the record as to why management saw fit to send 5 men to splice a cable, a job which according to uncontradicted testimony of experienced employees ordinarily required by 2 or 3 at the most.

In any event, after the supervisor arrived a number of pickets appeared at the scene, a customary procedure during the strike, which General Counsel does not claim to be coercive.

Only Matz and Ghearing testified about occurrences that morning. The substance of the credible portions of their testimony is to the effect that Ghearing and Foster were called uncomplimentary names, told they "had better" get out of town, and "if you have any concern for your family, you will be leaving here." Although both Ghearing and Matz claimed that their work was "impeded" by strikers, when questioned more carefully about this point their specific testimony makes it clear that their being "impeded" consisted only in having to step around some striker in going from place to place at the edge of the public highway. There is no evidence to support a finding that the supervisors were physically prevented, by bodily contact or otherwise, from performing their work.

The Trial Examiner does not credit the denials of the strikers that Ghearing and Foster were called names, and warned that they had better leave town. Surrounding facts [fol. 27] establish without doubt that the strikers resented the importation of "outsiders" and, having observed all of such strikers as articulate witnesses, the Trial Examiner has no doubt that they voiced their resentment in linemen's terms.

In summary, then, the Trial Examiner concludes and finds that on August 13, at this location, union pickets and

other strikers threatened supervisors Ghearing and Foster, supervisors of the General Telephone.[16]

11. Afternoon at Elks' Country Club, August 13

That same afternoon the same five supervisors went to repair a cable at a place identified as the Elks' Country Club, and pickets again came to the scene. (The Trial Examiner does not credit Matz' testimony that there were pickets already there when the supervisors arrived. Ghearing said there were none, and there is no explanation as to how pickets could know, in advance, where supervisors were going in the entire countryside, except by following them.)

Giving full face value to the testimony of Matz and Ghearing, there appears to have been neither violence nor threats of violence at this location. Both said that during the afternoon some rocks fell near them, but neither saw who threw them. Matz' implication that the rocks must have been thrown by the strikers because no one else was "in the vicinity" is refuted by Ghearing, who said that "there was a flagman for a road construction job there," at the time he arrived.

On the contrary, undisputed testimony of Thornton Gregory, one of the several pickets who readily admitted that they were there, is quoted, in part:

> Bob Kern was on the pole. (Kern is an Ohio Consolidated supervisor.) Me and Bob had been friends, bowled together, so he was acting a fool with another [fol. 28] one, and I told Bob, "Turn around. I would like to see how you look with a pair of workmen's clothes on." He laughed and turned around on the pole. That was all that was said.

The credible evidence does not support the allegation of the complaint to the effect that on this occasion super-

[16] In the opinion of the Trial Examiner, however, the credible evidence is insufficient to find that their own supervisors, of the Ohio Consolidated, were likewise threatened or called names, that the work was impeded, or that after leaving the site, the supervisors were threatened with a sling shot.

visors were menaced or interfered with. A comparatively pleasant, country club afternoon seems to have been spent by all concerned.

12. Turkey Shop incident, evening of August 13

Many scores of the 3365 transcript pages are devoted to this Turkey Shop incident which, quite literally, may be summed up as an upsetting climax to the first day's appearance of outsiders Ghearing and Foster in the Portsmouth area. Some 75 nonstriking citizens of that city gathered near and overturned their station wagon as the 2 prepared to enter it after dining at the Turkey Shop, while 20 or 25 strikers, including strike directors and picket captains, according to their own testimony stood around in the near vicinity, valiantly maintaining the role of innocent and only casually interested bystanders.

Briefly described, what happened is this, according to the credible parts of testimony of all concerned: About 7 o'clock that evening a union meeting was being held at a place some distance from the Turkey Shop. Hipple was conducting the meeting. Someone called to him through an open window "there's some strike breakers out at the Turkey Shop." Hipple informed the union members present and many of them proceeded in their cars to that eating place. Hipple and 3 or 4 others went in, and found local supervisors and Ghearing and Foster eating in a side room. Indicating the latter 2, Hipple asked Matz if they were leaving town that night. Matz referred him to the "office" for an answer. Hipple told Matz that there was "quite a group outside who would like to know," and then left, with his companions. After finishing their meal, Ghearing and Foster went to their station wagon, parked [fol. 29] in the rear of the restaurant. A number of the strikers were in the vicinity when a much larger group of unidentified Portsmouth people rushed the car, rocked it, and overturned it. The strikers then hurried to their cars and left the scene.[17]

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[17] The Trial Examiner does not credit Matz testimony that, from a distance, he saw one striker actually rock the car. Ghearing was

Without unnecessary discussion, it appears clear to the Trial Examiner, and he concludes and finds, that the union leaders were responsible for the overturning of the car, whether they actually participated in the overturning or not. It was in demonstration of the threat uttered earlier the same day, to the effect that these two "outsiders" had better get out of town.

13. Morning incident, Lincoln-Offner alley, August 22

After about 10 days of apparent quiet on the strike front after the Turkey Shop episode there was some disturbance in another Portsmouth alley on August 22. For some reason unexplained in the record, this time the company had sent some 8 or 10 "supervisors" to repair a single cable, all being imported from outside the area. It is undisputed that none of these "outsiders" wore the "blue tags which the Common Pleas Court assigned to the company personnel." [18]

The only management witness to testify about this incident was Donald M. Seward, who identified himself as construction supervisor for the General Telephone, in Alexandria, Ohio. Seward, as a witness, plainly had difficulty in identifying a number of these strangers, who he called "supervisors," but said that at least 3 of them came from Pennsylvania, and admitted, as to one, that he had no idea how he happened to be there. These facts, in the opinion of the Trial Examiner, acquire added significance in the light of the uncontradicted testimony of investigators, also [fol. 30] from Pennsylvania and hired by Ohio Consolidated, that about week later 2 of them, because of their size, were urged by Zachman to take jobs posing as linemen. Seward is not a small man, at 31 he weighs 220.

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beside his car, and his testimony does not support Matz on this point. On the contrary, Ghearing said "I couldn't say who actually had their hands on it."

[18] The quotations are from counsel's question of Norman Bush, union steward and picket captain, who answered in the affirmative.

The findings, which follow, as to events in the alley that morning, are based upon the credible testimony of several pickets who were there, much of which is undisputed.

After these strangers arrived, a few pickets came down the alley. Only 2 of the "outsiders" were working, others were standing around nearby, on either side of the alley. The pickets called up to the men on the pole and asked if they knew there was a strike on, and said that they were taking their jobs. One of the strangers told the pickets, "Get out of this alley," another told them they had no business there and gave them 5 minutes to get out. One of the strangers from Pennsylvania drew back as if to hit Picket Captain Bush, but was restrained by others. Upon this Bush told them that the strikers had as much business in the alley as they did, and if they felt that way about it, "for them to get out." The 8 or 10 pickets advanced toward the strangers, who climbed into their trucks and left.

The Trial Examiner concludes and finds that, while the pickets may well have caused the strangers to leave the alley that morning, the incident was precipitated by the supervisors themselves. The allegations of the complaint regarding this incident are not supported by the preponderance of credible evidence.

14. Afternoon incident, same day, same alley

Apparently as a result of the morning flurry, both sides returned in increased numbers to the same alley after lunch. This time the men from outside the area were accompanied by local supervisors, including Matz, General Manager Purpura, Plant Superintendent Pratt, Engineer Ritter, and Kern and Conley, the latter 2 previously identified as Ohio Consolidated supervisors. As in the morning, only 2 of the large number of supervisors did any work. Three of them testified about the incident—Matz, Ritter and Seward. [fol. 31] Some 17 pickets and strikers readily admitted that they were present and testified about it.

Even if the testimony of the three supervisors is given face value, nothing is shown to have happened that afternoon of a violent or serious nature. Some names were called, and so were police. The single threat of violence

admittedly was made by Bush, but only after Plant Superintendent Pratt insisted, over the striker's objection, upon taking his picture. Bush did not carry out the threat, and Pratt did take the picture.

The one item which Matz and Ritter stressed was their claim that Hipple showed up that afternoon with a pistol—a real one they said, which Ritter and Seward identified with assurance as a brown-handled revolver. That none of the supervisors were concerned, however, about Hipple's "revolver" was admitted by Seward, and Ritter said that no one called the attention of police to it when they arrived.

The plain fact is that Hipple had no "revolver" or any other genuine "gun" with him that afternoon. It was a plastic toy pistol, which his small son had left in the car and which another striker by impulse handed to him as they got out of the car at the alley. Both Matz and Seward testified that Hipple came down the alley he referred to Lennberg—previously identified as a company official. Matz quoted Hipple as saying, "By God, Lennberg hides his gun, but I am going to put mine out where everybody can see it."

Additionally revealing circumstances are established by the undisputed testimony of Hipple. The latter said that a few minutes before coming to this alley he, with others, had seen Lennberg getting out of his car near the Turkey Shop. Upon recognizing them, Lennberg reached into the glove compartment of car, withdrew a "gun" and thrust it into his pants pocket. Hipple chided him about it, and within a few minutes appeared in the alley, clicking his toy pistol, and calling out the remark quoted above from Matz' testimony.

It is also undisputed that Hipple had this toy in plain view when talking with the police, but was not questioned about it.

[fol. 32] The Trial Examiner concludes and finds that the preponderance of credible evidence fails to sustain the allegations of the complaint as to this incident. It is further, and specifically, found that there was no "exhibiting" of "a firearm" by any striker that afternoon.

15. Home Supply lot, later same afternoon

Later the same afternoon, 8 or 10 local and outside supervisors went to West Portsmouth for a repair job. After they arrived about the same number of pickets appeared. Before the pickets came on the scene, the supervisors who performed the repair had gone about 100 feet off the road, where they had parked their truck, and into what Ritter described as "a little gulley there," in "rather dense growth." He admitted that the men working there could not be seen by the strikers when they arrived.

The group of roving pickets, observing the company truck beside the road, proceeded on about 50 feet to the nearby parking lot of the Home Supply Company. Hipple testified credibly—particularly in view of Ritter's above-quoted testimony—that the pickets could see no one working, so they got out in the parking lot and just "ginned around there, trying to figure out what they was doing." The only supervisor with whom the pickets talked briefly was Ritter, who urged them to give up the strike while striker Bloomfield accusing him of taking their jobs. The strikers then moved off into the parking lot and batted stones and pebbles off into the field. Although it appears that some of the stones fell in the vicinity of the men working, there is no claim that anyone was hit or that any protest was voiced by the unseen supervisors.

When the job was finished the supervisors got into their truck. At this point there is some confused testimony as to who made threatening gestures to whom. Seward said Hipple and Bush threatened Ralph Wemple, a General Telephone supervisor from New Philadelphia, by raising pick handles, but Wemple himself, a witness, said nothing about it. And when Wemple in the back of the truck made a threatening move to throw some tool at the strikers, they tossed gravel at him.

[fol. 33] It is clear from the credible testimony that there was no physical violence, and no specific threat of such violence, on this occasion by either the strikers or by the supervisors. The work of the supervisors was completed without interruption. The calling of mere uncomplimentary names the Trial Examiner believes to fall far short of

coercion. The allegations of the complaint as to this incident are not sustained by the preponderance of evidence.

16. Seventh St. parking lot, August 23

This is another tomato incident.

According to Matz, the only supervisor to testify about it—although he said several others were there—he and these others were looking at a truck in the Seventh Street parking lot early the morning of August 23. While he stood there, he said, a tomato "hit the hood of the truck, and it splashed into my eyes." That is all there was to the event, according to Matz—"I seen it hit and splash." Out on the public street, he further said, 100 feet or more away, there were a few pickets. Matz assumed that the tomato was thrown, according to the following colloquy:

> Trial Examiner: And you are assuming that it was thrown, that there were no tomato plants in the near vicinity from which it could have dropped, is that it?
> The Witness: That is correct.

He did not see it thrown, and admitted that it was a public street where he saw pickets and "there might have been" other citizens on the street besides pickets. "Ordinarily," he said, "there would be other individuals passing in that street."

When the Trial Examiner asked Counsel Dooley if, upon this paucity of evidence, he wished him to "infer, then, that it was the pickets and not some other individuals," Dooley replied "Well, there are additional witnesses to this incident."

There may have been other witnesses. If so, General Counsel failed to call them.

[fol. 34] When pressed by the Trial Examiner; "Do you wish me to infer from this witness' (Matz') testimony that it must have been a picket?" Dooley replied, "Yes, sir." When asked why, and on what grounds, Dooley further replied:

> Well, the only thing that appears here so far that places anybody out of the street is the assumption that, since it is a public street therefore there must have

been somebody else going by. I don't know that that's a valid assumption.

The Trial Examiner considers it unnecessary to assume anything. Since there is not the slightest identification of anyone, by the one witness to testify about it on the part of management, the conclusion is made that the evidence is insufficient to sustain the complainant's allegation, which is specific, that on this occasion Union Agents Hipple, Bush, Cook, Born and Birchfield threw tomatoes "at supervisory personnel."

17. Incident in Rev. Butterbaugh's yard, West Portsmouth, August 23

Seward was the only management witness testifying about this incident, although he said "there were several supervisors with me." It appears that they had gone to this locality to right an overturned mobile telephone truck. Eventually several pickets showed up. The only item of the slightest significance, related by Seward, was his overhearing striker Russell Cook make a remark to someone, he did not know who, that he was going to get "blood and hair" on his pick handle. He admitted that only Cook had a pick handle, and that when he overheard the remark he was "fifty feet" distant.

Cook readily admitted having made this remark, while "playing the fool," to Hipple.

There were no actual threats made to any supervisor, on this occasion, no violence, and no interference with their work.

[fol. 35] The Trial Examiner concludes and finds the evidence insufficient to sustain the relevant allegation of the complaint.

18. Star Yard, August 24, morning

Early the morning of August 24 some 10 or a dozen local and "outside" supervisors proceeded to an open area in the countryside between New Boston and Sciotoville for the purpose, Matz said, of repairing an "aerial cable," a job

which Matz himself said was performed by just one man. All of these supervisors went out together, also according to Matz, between 7:30 and 8:00 in the morning. Here they remained—most of them obviously with nothing to do—for 3 hours or more, no strikers being present.

By 11 o'clock, said Matz, "quite a crowd" of pickets showed up and made "insulting remarks" and called "vile names." Then also according to Matz, he saw strikers follow Strike Director Hipple to a flood wall near a railroad, some 75 feet distant. The strikers went behind the flood wall, he said, he heard Hipple call "All right, men, let them have it," whereupon "literally hundreds of rocks came over the wall and landed" near the supervisors.

The Trial Examiner does not believe Matz' testimony insofar as it quotes statements accredited to Hipple. Not only did the district manager contradict himself on this point—having early in his testimony admitted "I couldn't hear what he (Hipple) said," but when this contradiction was called to his attention he became evasive, he claimed that Hipple was in "several places." Furthermore Seward, the other supervisor to describe the incident, admitted that he could hear nothing of the "conversations." Seward's testimony also contains its own contradictions, for although he said that Hipple was not using a "very loud tone of voice," 75 feet away, he nevertheless heard him say "Too far to the left," or "too far to the right," while the stones were flying.

Of significance, also, in determining the credibility of the two supervisors is the admitted fact, by Seward, that no charges of assault and battery were filed by the supervisors on this occasion. As the record demonstrates, such [fol. 36] charges had been, and continued to be, filed as to incidents far more trivial than Matz' claim that "literally hundreds of rocks" were thrown at them by the strikers.

Rocks were thrown that morning, there can be no doubt as to that. The credible testimony of several strikers establishes that point. Their version is, however, that the rocks came from a gang of kids, who apparently had been fishing on the other side of the flood wall. The strikers chased the kids away, according to their story, when stones fell near their own cars.

No supervisor testified as to the identity of anyone seen throwing a stone. In the absence of credible evidence clearly showing that the strikers threw stones, or caused them to be thrown, the Trial Examiner concludes and finds the evidence too insufficient to sustain the allegations of the complaint as to this incident.[19]

19. Same yard, same day, afternoon

As to the afternoon incident at the same location the record contains a great deal of testimony. If consideration were to be given only to the testimony of General Counsel's witnesses, a reviewer would find it most difficult to reconstruct the events, so confused and contradictory are the versions. For example: Matz testified that when the supervisors returned to the Star Yard about 3 o'clock that afternoon at least a dozen strikers were already there, and more arrived later; Casteel said that when the supervisors arrived there were no strikers and none arrived for nearly an hour; Wemple said there were "hardly any pickets at all there in the afternoon . . . they were in court that afternoon."

It is fairly clear, from their testimony, that the supervisors were given instructions by top management that [fol. 37] same afternoon, before going to the Star Yard, as to incidents which might happen. General Manager Purpura spoke to them, as did Counsel Griffith. But as to precisely what these instructions were, the confused and contradictory testimony of the supervisors is again difficult to unravel. Matz said that there was no discussion of the taking of pictures at that meeting by Purpura, yet shortly thereafter he admitted that cameras were taken out to the Star Yard that afternoon "at the instructions of Mr. Pur-

[19] The same paragraph of the complaint claims as an unfair labor practice the following of supervisors back to town that noon. Matz said that the pickets, following in their cars, blew their horns all the way back. In reply to a question from the Trial Examiner, Counsel Dooley said, "Yes, sir, I would like to have a cease and desist order against that." The Trial Examiner considers the incident so trivial as to need no further comment. An interesting future for the Board is foreseen, if it is to police the decibels of the nation's highway traffic.

pura." Engineer Ritter, at first testifying that at the meeting with management there was no "discussion of picture-taking to be done that afternoon"—"none whatsoever," a few questions later admitted "the only instructions we had was to take cameras if any of these things occurred, incidents occurred, try to get a picture of them, if we possibly could."

At least two of the supervisors, Seward and Wemple, admitted taking pictures at this location—although Wemple insisted that the picture he took, which was reproduced not only in the local newspaper but also in "Business Week," was taken in the morning and not in the afternoon.

Reconstruction of the events that afternoon, the Trial Examiner confesses, is not easy, from the inconsistent accounts given by the supervisors. From the credible portions of testimony of both supervisors and the many pickets who were questioned on the matter, it appears that this is what happened.

For some time all was peaceful at the Star Yard, the supervisors gathered around the pole where 1 or 2 men were working, the strikers scattered in groups along the flood wall, some distance away. Finally Matz and Wemple approached the strikers, the latter with his camera. He started to take a picture of Hipple, and the strike director told him not to. Wemple declared, "You little son of a bitch, you're not man enough to stop me," and took the picture.[20] At this point Hipple and others started for the 2 supervisors, who beat a hasty retreat. That there was [fol. 38] no "chasing or running after supervisors" until after the taking of the picture by Wemple is admitted by Ritter, a supervisor and a witness for General Counsel.

At this point Casteel, previously identified as a General Telephone supervisor, rushed up, called out "You sons of bitches, I'll get you all," and drew a chrome pistol from his belt or pocket. Upon sight of the pistol, and according to the undisputed testimony of Hipple and others, the strikers

[20] Wemple did not deny having made the statement attributed to him by Hipple, but merely said he had "no conversation" with him.

promptly "put on the brakes," and rocks began flying back and forth, while some of the pickets went for pick handles.[21]

It is clear that from this point on a number of rocks were thrown by both pickets and supervisors. There is no evidence, however, that the strikers used the pick handles to assault any supervisor.

The Trial Examiner concludes and finds, upon the basis of the credible testimony in the record, that the occurrences at the Star Yard were precipitated by conduct of the supervisors. Absent the approach of Matz and Wemple toward the strikers, and Wemple's uncomplimentary remark to Hipple, which sparked the incident, there is no reason to believe that the supervisors would have been attacked by rock throwing.[22]

The complaint alleges, also, that the strikers harassed and interfered with the supervisors during their return trip to Portsmouth that afternoon. On the contrary, the credible testimony of both the strikers and some of General Counsel's witnesses establish the fact that for most of that 4-mile trip it was Vice-President Cole who did the "harassing and interfering." It is undisputed that in his car he repeatedly blocked the highway, driving out into the lane whenever the strikers attempted to pass the company trucks.

[fol. 39] It is also alleged, and there is some evidence to show, that when the company trucks reached their parking lot, entry through a gate was blocked for a few minutes by a stalled jeep belonging to one of the strikers. Entry was temporarily halted, but credible evidence is insufficient to show that the traffic interference was intentional. The jeep had reached a point in the street in front of the parking lot ahead of the truck with a flat tire and its radiator

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[21] Casteel did not deny having the pistol, said in effect that he would not deny having made the threat attributed to him by Hipple, and admitted that it was after his rush toward them that the strikers returned with pick handles.

[22] In appraising the testimony regarding this incident, the Trial Examiner cannot ignore the undisputed fact that even before August 24 the Ohio Consolidated had made its move to bring in "investigators" who, when they arrived, were urged to participate in and precipitate violence against the strikers.

boiling. When other strikers arrived they promptly hoisted it out of the way.

20. Route 52, near Friendship, August 29

The complaint alleges that on this date three named telephone girls, strikers, stoned supervisors in vehicles they were driving along this route and continued stoning the vehicles and supervisors when they arrived back at the city headquarters.

The only witness, however, to testify for General Counsel on this alleged incident was General Plant Engineer Ritter. Unsupported, his testimony is of small weight. According to him, he and a number of "outsiders"—some of whose names he could not recall, but one from as far away as Muskegon, Michigan, were outside the city, near Friendship, Ohio, relocating a pole. No one interfered with their work, he said, although they noticed "pickets . . . parked in two cars up the road." When the supervisors started back to town, however, he said "all of a sudden they come blasting by us with their horns and blocked us, threw rocks at the truck and—I don't know who all was in there, but I did recognize three girls that had been along quite a bit, Juanito Conley and Janet Ward and Ruth Beadle. One of them also had a gun, but they stuck it out the window and pointed it back at us." He identified Conley as pointing the gun, and then said "they followed us all the way back to Portsmouth."

Just how Conley or anyone else could have pointed a "gun" back at Ritter's car, while following it, is a mystery the Trial Examiner will not attempt to solve. Other inconsistencies in his unsupported testimony add to its discredit. [fol. 40] Although, as noted above, he said that whoever was in the two cars began throwing rocks at the company truck as it started to leave the job site at Friendship, "which was approximately, oh, seven or eight miles, maybe, from Portsmouth," and "that sort of thing happened all the way into Portsmouth," he thereafter said "they didn't rock us until we got down about the airport," which he said was "about maybe three miles, something like that," from Portsmouth.

Each of the three girls flatly denied being at this location on the occasion cited by Ritter. The Trial Examiner believes them, and not the inconsistent and unsupported testimony of Ritter. Each of the three girls testified straightforwardly about incidents in which they were later involved, as noted below.

In short, the Trial Examiner concludes and finds that the credible evidence fails to support the allegation of the complaint concerning this incident.[23]

21. Kendall Avenue, August 31

Late in the hearing General Counsel amended his complaint to allege that on August 31 "Russell Cook, Russell Lewis, Janet Ward, Juanita Conley and others" assaulted supervisors, on Kendall Avenue, Portsmouth. Having reviewed the evidence General Counsel offered to support the allegation, it appears to the Trial Examiner that the amendment might well have been delayed somewhat longer.

Only two witnesses for General Counsel testified about any incident that night. Neither of these two identified any one of the above-named individuals as engaging in any assault and battery.

In substance, Supervisor Seward said that he, together with Cole's secretary, Callehan, and Patricia Wilson from General Telephone, were returning to the motel which housed visiting supervisors when he saw some women on the street, whom he could not identify, striking at five [fol. 41] women inside a taxicab, drawn up at a curb. He could identify two of the women inside the car, but said all were "supervisors." Seward and the two girls with him went on to the motel, and sent for the police. Meanwhile he and Casteel started back to the scene. Arriving also, at the same time, according to Seward, were the police and a rock. As to the rock, said Seward, "I didn't see who threw it, or anything."

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[23] Nor is there sufficient credible evidence in the record to support a finding that any of the three girls named by Ritter, or any other striker, threw a rock through a window at the exchange upon his return from Friendship. Ritter admitted that he could not identify who "threw the brick."

Callehan admitted that she could identify none of the women outside the taxicab.

None of the five supervisors alleged to have been "assaulted and battered" were called as witnesses. And Pat Wilson, although a witness, was not questioned about the event.

The Trial Examiner finds insufficient evidence in the record to support the allegations of the complaint as to this incident.

22. Heath incident, Sciotoville, September 6

The only witness to testify about this alleged incident was Eva Heath, a chief operator for Ohio Consolidated. Even if her testimony about it were to be accepted at its face value, the Trial Examiner would be unable to find either the Local or the CWA accountable for it. For it is clear that whatever altercation may have occurred, no pickets were involved, nor were any pickets present at the time, and it took place on a public street.

According to Heath, she arrived at Sciotoville early the morning of September 6, together with another supervisor who was from out-of-State. She said that as she got out of the cab she was physically attacked by strikers, whom she had seen get out of a car nearby, and whom she identified as Juanita Conley, Janet Ward, Ruth Beadle and Pansy Smith—all girls with whom she had worked for years with no trouble. She said Conley broke her glasses, and Ward beat her on the back. She got back into the cab, she further testified, and it drove away.

From Heath's story there appears to be no explanation for the alleged attack. The outside supervisor with whom [fol. 42] she arrived in Sciotoville, she said, had been riding with her to this exchange for the preceding 2 weeks, and continued to do the same for the next 3 weeks—without any similar incident, so far as the record shows.

Conley and Ward flatly and credibly denied being at Sciotoville that early in the morning. Beadle and Smith readily admitted that they were there, and their account of the incident reasonably accounts for the fact that Heath

had no difficulty, either before or after September 6, in getting into the exchange. Their story, in substance, is as follows. Smith had stayed overnight with Beadle, and was being driven home in Beadle's car along a route that led by the exchange in Sciotoville. As they approached this point they saw a cab drive up. Although not picketing, out of curiosity the two stopped and went over to see who was getting out of the cab. They asked Heath not to go in with the "outsider," whereupon the latter demanded of Beadle, "Do you think a little bitch like you could keep me from going to work?" Beadle reached in and slapped the girl's face. From this point on the Trial Examiner has no doubt that more slapping and hair-pulling occurred, between all four girls, and that Heath and the other supervisor left in the cab.

That this "outside" supervisor made the quoted remark to Beadle is undisputed. Only Heath, for management, testified about the incident. Heath's credibility is further cast in doubt by the fact developed on cross-examination, that in an affidavit in Municipal Court she charged Conley with destroying her green sweater that morning—a charge which, as a witness at this hearing, she admitted was untrue.

The Trial Examiner concludes and finds that credible evidence fails to support the allegations of the complaint as to this incident.

23. Ett Mar Motel, September 17

Only one witness—General Telephone's Construction Supervisor Seward—testified for General Counsel as to this alleged incident, although Seward named many other sup- [fol. 43] ervisors and a motel man who were present. The account by Seward, unsupported by more credible witnesses, borders on the fantastic. According to him, he and another supervisor, Foster, at about 10 o'clock at night were taking three female supervisors to the Ett Mar Motel where, it seems, most of the out-of-town supervisors and management officials of General Telephone stayed while in Portsmouth, as well as the investigators hired by the Ohio Consolidated. As he and the others drew up in front of the

motel office, he said, he saw two cars stop on the road about 100 feet away—where, as he admitted, the lighting was "not very clear"—and saw four girls get out of one car and one man from the other. He said that he watched them carry "boxes of stuff" over to the motel and "before the girls could get out" of his car, those approaching began "throwing tomatoes." He identified two of the strikers as Janet Ward and Pansy Smith, and the man as a Ray or Frank Born. Although the additional names of Juanita Conley and Ruth Beadle were suggested to Seward by General Counsel, he said he could not recall "offhand" whether these two were present. He declared that while he and the other supervisors sat in the car—"our people," he said, "never got out of the car" the strikers threw "tomatoes and old socks full of mud" at his car. Finally, he said, Foster got out to go into the office and was hit by a tomato. He drove the girls around back of the motel. He concluded by stating that the strikers "finally decided to leave," and "left the boxes of stuff that they hadn't thrown yet on the lawn at the Ett-Mar."

The strikers claimed by Seward to have been present on this occasion flatly denied being there.

The spectacle as depicted by Seward is unbelievable. He had stopped at the motel office, he said, when he saw the two cars stop on a main thoroughfare 100 feet away. Yet he claimed that "before the girls could get out of" his car, these five strikers disembarked from their cars, removed boxes, hauled them to the motel, and started throwing tomatoes.

[fol. 44] Trial Examiner concludes and finds that credible evidence is insufficient to support the allegation of the complaint as to this incident.

24. Woodland Avenue, Sciotoville, September 18

It appears, from the credible portions of testimony of all concerned, that more actual violence occurred on this occasion that at any other time or place during the entire strike.

Only 2 management witnesses testified about it—Seward and Casteel, both previously identified, while nearly 20 strikers gave their versions of the events.

The Trial Examiner believes this report would be needlessly lengthened by reviewing in detail the testimony of each of some 20 witnesses, and then resolving all inconsistencies and contradictions. The most reasonable reconstruction of happenings will, therefore, be made from the credible testimony, taking into consideration not only the fact that both Casteel and Seward have been previously found to be unreliable witnesses, but also the fact that the alleged violence occurred only about 2 weeks after the Ohio Consolidated had unsuccessfully tried to persuade hired "investigators" to do violence to certain named strikers.

All of the "supervisors" involved at the Woodland Avenue incident were from outside the Portsmouth area—some 10 or a dozen of them. And Casteel had been active at the Star Yard incident, not long before this, where he had threatened the strikers with a pistol.

And as in previous cases, only two of the "outsiders" were actually working, when the pickets arrived, the others merely standing around.

The credible, undisputed, and supported testimony of Hipple is to the effect that no trouble developed at this location until he was roughly shoved back into the group of strikers by Supervisor Erhman. According to Hipple, he and others were walking along the public street when he noticed the company truck, with its door open, parked by the curb. Someone had told him a gun was carried in the glove compartment, and he stopped, "popped the [fol. 45] button" of the glove compartment to see if a gun were there. Erhman ran up, and shoved Hipple back "into above five pickets." Hipple said, candidly, "I realized I was in the wrong, but I had done nothing, but when he shoved me . . . into about five pickets . . . spontaneously I was kicked off right then. Everything happened."

A free-for-all followed. Supervisor Seward swung a headset at striker Bush, who tore it away from him. Casteel came running at the strikers with a hammer in each hand. Strikers took the hammers away, bundled him into a truck, and when he kept kicking the door open struck him on the legs. It appears that the net result of the affray was that the strikers, outnumbering the supervisors, forced them into their trucks, and they drove away.

It also appears that strikers and supervisors both filed charges against each other in the local courts, but the record does not reveal any punitive disposition up to the time of the hearing's close. The record does disclose that Casteel's charge against Hipple was dismissed because the supervisor did not show up to prosecute, and that charges were still outstanding against Casteel.

There is no doubt in the Trial Examiner's mind but that the pickets did engage in violence that morning in Sciotoville. And so did the supervisors. Two important factors are: (1) the physical action was precipitated by a supervisor; (2) there is no evidence that the strikers' action was taken for the purpose of interfering with the two men actually working, although that was, of course, one of the results.

Under all the circumstances, including the established company policy of instigating violence against the pickets, the Trial Examiner concludes and finds the evidence insufficient to sustain the allegations of the complaint as to this incident.

25. Linden Avenue, Portsmouth, same day

The only supervisor to testify about this incident was Wemple who, as found theretofore, precipitated the trouble at the Star Yard, and whose memory was so faulty as to [fol. 46] contradict all other supervisors as to when the incident occurred.

When the supervisors left Sciotoville, they returned to Portsmouth, and according to Casteel's testimony stopped by at Linden Avenue, where another group of supervisors were gathered, under Wemple's supervision.

Wemple, according to his testimony, promptly ordered his crew into their trucks. Meanwhile a number of the pickets who had followed Casteel and his group into town arrived at the Linden location, parked their cars, and some of them approached the company trucks.

As Bush came by one of the trucks he stopped to speak to one of the strangers—this one, he said, apparently from Texas because of his cowboy hat. Wemple, about to enter the truck, ordered Bush out of the way, and when Bush did not move at once, hit him with a 10-12 pound sound

box. Upon this, Bush and 2 other strikers—with some difficulty since Wemple is over 6 feet tall and weighs in the neighborhood of 250 pounds—shoved the supervisor into the truck.

Here again, as at the Woodland Avenue incident, it was clearly a supervisor who made the first move of violence. And Wemple admitted, during the hearing, that he was under bond for appearance before the Grand Jury, as a result of criminal charges arising from his attack upon Bush. The record contains no evidence of any countercharges against Bush.

The Trial Examiner concludes and finds that the Linden Avenue occurrence was precipitated by the violent conduct of Supervisor Wemple, and that the preponderance of credible evidence fails to support the relevant allegations of the complaint.

26. Portsmouth Alley, October 11

This is a minor incident between two striking female employees and Patricia Wilson, a training instructress for General Telephone. No pickets were involved.

According to Wilson, although she had been working at the Seventh Street office in Portsmouth since Labor Day [fol. 47] without incident, she was the victim of an unprovoked attack by three strikers, Juanita Conley, Janet Ward, and Ruth Beadle, when she returned to work from lunch on October 11. Her testimony is unsupported. According to her, these three just walked up to her, saying nothing, and began slapping her around. Her testimony is unconvincing.

The account of the incident, candidly admitted by the girls accused by Wilson, is the more credible and is accepted as true, particularly in view of the fact that it appears that Wilson was interfered with in no fashion either before or after October 11.

In substance their account is as follows. While Beadle was in the Western Union office, Conley and Ward waited for her in a car parked at the curb. As they sat there, Wilson came by. Conley told Ward she was going to talk to Wilson. She left the car, caught up with Wilson, asked

her if she was going in to work for the telephone company, and when Wilson replied that she was, asked her not to. Wilson promptly replied that she had no time "to be bothered with any sons of bitches"—a remark heard also by Ward, who had followed Conley. Conley slapped Wilson, and turned to leave. Wilson called her a son of a bitch, and Conley slapped her again. Ward took no part in the affair, and did not touch Wilson.

The Trial Examiner concludes and finds that the preponderance of credible evidence fails to sustain the allegations of the complaint as to this incident.

27. Cap pistol at Ett Mar, October 12

Paragraph 14 (23) of the complaint contains the most serious yet least specific allegation in the entire document issued by General Counsel. It reads:

> On or about October 5, 1956, driving past the Ett-Mar Motel on Kendall Avenue in Portsmouth, Ohio, and there discharging a firearm at the said Motel buildings, in which supervisory and managerial personnel of the Employer were residing.

[fol. 48] The Trial Examiner notes that no individual, or individuals, are specifically named as having discharged "a firmarm," nor are any individuals named in the introductory section of paragraph 14, which merely claims that the CWA and its local have violated the Act "by and through their officers, agents, and representatives."

The evidence adduced by General Counsel, concerning the alleged incident, is even less revealing than the text of the complaint. It is further observed that in their briefs neither General Counsel nor counsel for the Charging Party specify the individuals, if any, whom they believe—or wish the Trial Examiner to believe—actually discharged "a firearm." Counsel for the company merely points to the testimony of one of his witnesses, General Counsel refers to "participants."

Testimony regarding the incident was given by two General Telephone supervisors, Seward and Casteel, both of whom have previously been found to be unreliable wit-

nesses, and the latter found to have threatened strikers with his gun at the Star Yard incident.

The Trial Examiner considers it unnecessary to discuss, in extensive detail, all the inconsistencies, contradictions, and confusion in the testimony of Seward and Casteel, nor the many improbabilities and obvious impossibilities of fact raised by such testimony. A few are enough.

In the first place, Seward admitted that he gave the wrong date of the occurrence to the Board's Regional Office in October—shortly after the event. If he later discovered his error, as he said, then General Counsel was apparently unaware of it, for no correction was made by the latter before the hearing, and from his examination of Seward it is indicated that he still believed the real date to be October 4th and 5th. At the hearing Seward and Casteel insisted that it was really the night of October 11-12.

According to Seward he and Casteel had been cruising around the city all that night, in a company car, reporting by radio telephone to another supervisor stationed in the main office building the license numbers of cars they saw in the vicinity of the Dewey and Albert Street exchange. [fol. 49] During the night they went several times to the Ett Mar Motel, on the city's outskirts for coffee in room 11, occupied by Division Manager Kimball. At about 3:00 a. m., when it was dark, they again visited this room. At first, on direct examination, Seward said Supervisors Foster and Ghearing were in the room, then he said Ghearing "was standing out in front of the building." On cross-examination he said that Kimball "wasn't in the room," but only Casteel and Foster besides himself. In remarkable contradistinction to Seward's testimony on this point is that of Casteel who, when asked by General Counsel who was present in the room, replied, "Mr. Seward, Mr. Kimball, George Ghearing, Bob Erhman, they was all present, Bob Foster." On question later Casteel added, "And it was two commercial fellows in the room, and Mr. Kimball, and several ladies."

Quite a crowd was gathered in a motel room, it seems to the Trial Examiner, if Casteel is to be believed, yet only two of them appeared as witnesses.

While the 2 or 3—or the many—(depending upon whose version is accepted) were in the room, both Seward and Casteel said that a car went by, and someone in it was firing what they both thought was a "cap pistol." According to Seward's version (and despite the above-noted fact that he had placed Ghearing both inside and outside the motel room) before any "shooting" Ghearing called in to him, "There they are again" (on direct examination) or "There's one of them, or 'there's that car,' or something like that, to that effect" (on cross-examination). Yet Seward also said on cross-examination he had no advance warning that "this car was coming by."

Seward said that he first saw the passing car when it was "right directly in front" of the motel room, inside the doorway of which he was standing. He said the car was passing at "thirty or thirty-five miles an hour," that he could observe "who was in the car" for "ten or fifteen seconds" (and this despite the fact, if he is to be believed, that he was standing to the north of the doorway, while the car was going north. Seward testified that—despite [fol. 50] the darkness—he could see that the car "was a black green or dark blue" "with a light top," and "as it went by the street light I seen Ray Born, his head and arm sticking out, and he was shooting at the Ett-Mar." On cross-examination Seward said that Born "had his head and his shoulder and arm out of the window, just like he was aiming." He then said that he also could see "the gun," but could not tell what kind it was because "it was mostly covered up by his hand." And although he said he believed it was a cap pistol, he said it "made an awful loud report."

Yet Casteel, standing in the doorway beside him, said "we couldn't see the man" but "could see the gun."

Still thinking, if they are to be believed, that either Ray Born or some unseen person—depending upon the version of the two supervisors—had fired a "cap pistol," Casteel and Seward set out after the car. Both supervisors admitted that they lost it for some 15 minutes. Finally, after circling round, and when still "100 to 120 yards" from Kendall Avenue—on which the motel is located—Seward said he recognized "the same car" cross 17th Street, going south on Kendall, firing "several more shots at the motel."

Yet immediately after this testimony, he said that "by the time we turned down Kendall and started to follow them, they were right about directly in front of the motel office." To reach Kendall, it is noted, Seward's car had to travel "100 to 150 yards," and he said "we were traveling very slow." He said that he "heard" about four shots, this time, but could not see the firing. Casteel, on the other hand, said that he could see the firing "from the driver's side."

They got close enough to the passing car, Seward said, to discern the license number—yet they "stayed back about a block." Seward said that he, by radio-telephone, reported the license number to "the man up in the Eighth Floor," and continued to follow the car downtown. Since his car was following the other, the Trial Examiner has some difficulty in determining just what Seward meant by saying, "They made almost the same movements we did."

Eventually the car they were following pulled up by a police cruiser. The supervisors came around and parked [fol. 51] in such fashion that their headlights shone into the other car, and Seward said he distinguished strikers Born and Martin in the front seat, and Russell Lewis in the back seat. Casteel, however, said he "recognized Born," and that "he was setting in the cruiser talking to the patrolman."

Neither supervisor, however, said anything to the police.

After a few minutes the supervisors left this scene, and proceeded toward the Seventh Street office. According to Seward, when they "were about there," "the man on the eighth floor" told them, by radio-telephone, to go back to the motel—somebody had been shooting through the windows. He said they went at once to the motel. Casteel's testimony, however, is confused and contradictory, on this point. He said he could not remember when they went to the Seventh Street exchange after seeing the car by the police cruiser, nor could he remember when Seward told him of the report about the shooting. "Seward didn't tell me right off the reel when he got that information from the master station," he said. He said it was "possible" that Seward found out about the shots and "sometime later" told him about it. He said it was possible "because there was a truck on fire and it burnt up down at Seventh Street."

Then he said he did not remember what night the truck burned. The following colloquy is quoted:

> Q. Did it happen that night?
> A. I think it did.
> Q. Did you go down to see it?
> A. Down to see it? I put it out.
> Q. . . . Did you do that before or after you went up to the Ett-Mar Motel?
> A. I don't remember.
> Q. You say you put it out, though?
> A. I put out the fire. The date, I can't tell you what date it was.

It appears that eventually, whether they stopped to put out a fire or not, the 2 supervisors arrived back at the motel. At various points in his testimony Seward said police showed up from 10 to 20 minutes after they arrived. [fol. 52] There was some confusion at the motel when Seward and Casteel returned, as it reflected in the latter's testimony:

> There was a lot of confusion, and the boys, our people, employees, was going back and forth up the walk there, and the two girls had come out, and two commercial men, I don't know them by name, and had told about the shooting, through their windows, and—

Casteel said that he did not talk to the police officers, saw none of the bullets said to have been removed, did not find out how many shots had been fired through the motel, and did not report to or pass any information on to anyone in any official capacity of the Ohio Telephone Company. He further said he did not hear Seward talk with the police officers.

Seward, on the contrary, testified that he told the police officers the name of the individuals who did the shooting, and gave them the license number of the car, and told them where he had last seen "this automobile with the occupants."

If all the testimony of these two supervisors is to be accepted as true, then General Counsel has proven beyond

doubt that truth is stranger than fiction. He has not proven, however, to the satisfaction of the Trial Examiner, that any one of the three individuals seen by Seward and Casteel downtown, half an hour after the alleged shooting, was in any way implicated in causing bullet holes in the Ett Mar Motel. It is not within the experience, real or vicarious, of the Trial Examiner that it takes 20 minutes or more for bullets to travel 100 feet, and cause confusion on the part of occupants of motel rooms. If the occupants were not startled or awakened by the impact--and the supervisors admitted that the second time they went by the motel all was peaceful—then there remains to be explained what it was that caused their awaking after another 15 or 20 minutes had elapsed.

Since it has been established by undisputed testimony that two management representatives carried guns—Lenn- [fol. 53] berg and Casteel—imagination offers a possible solution to the mystery. The Trial Examiner, however, indulges in no findings based upon imagination alone.

Under the circumstances as above described, the Trial Examiner concludes and finds that the preponderance of credible evidence fails to support even the general and unspecific allegations of the complaint as to this incident.[24]

28. Conclusions as to all incidents

In summary, the Trial Examiner concludes and finds, as factual matters, that only the following incidents occurred as alleged in the complaint:

(a) Blocking company truck, July 19 (Item B-2, above)

(b) Impeding of supervisors, New Boston exchange, July 30 (Item B-6, above)

(c) Impeding of supervisors, Sciotoville, July 30 (Item B-7, above)

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[24] Apparently the Charging Party had less hesitancy in urging the commission of a crime before the Board, than before a local court. For it filed no criminal charges, on this point, although, as previously found, it did file a charge of violation of a city ordinance when a single tomato splattered against a truck Matz was examining.

(d) Threatening supervisors, Blain Matthews farm, August 13 (Item B-10)

(e) Turkey Shop incident, August 13 (Item B-12, above)

D. Conclusion

Now to apply the foregoing findings of fact to the legal conclusions sought by General Counsel, set out in succinct fashion in his brief.

He contends that:

1. The Respondent CWA and Local 4372 are jointly liable for the alleged violations charged herein because of their joint conduct of the strike.

2. Agents of Local 4372 instigated and committed various acts of violence against supervisors of the Charging Party and against supervisors and employees of its parent corporation.

[fol. 54] 3. Such acts of violence constituted restraint and coercion of employes in violation of Section 8(b)-(1)(A).

4. As a mater (sic) of law such conduct restrained and coerced both the striking as well as the nonstriking employees of the Charging Party and the employees of its parent corporation who witnessed or learned of such conduct.

5. The subjective reaction of both striking and nonstriking employees of such conduct is not material to the issues in this case since such conduct necessarily tended to coerce and restrain such employees.

As to point (1): the Trial Examiner agrees with this contention to the extent that he concludes and finds that the strike and the incidents of misconduct against supervisors found above were all included in the joint effort being engaged in by both CWA and its local.

As to point (2): the Trial Examiner concludes and finds that agents of the Local committed the acts found

above against supervisors of the Charging Party and its parent corporation. As to the claim that acts of violence were committed against employees of the parent corporation, the credible evidence, as noted above, will not support such a finding or conclusion. General Counsel cites but one individual, whom he characterizes as an "employee" of the parent corporation, against whom he alleges coercion was visited. That is Patricia Wilson. Without determining here whether or not she appropriately may be classified as an "employee" or a "supervisor" (it is clear from her testimony that the hiring of new employees depends largely upon her reports as to how well they conform to her training of them) it has been specifically found, in section B-26 above, that Wilson invited retaliation by calling a striker —not a picket—a vulgar name. It was there found and concluded that even if the slapping could reasonably have been attributed to the Local, it was the consequence of Wilson's precipitating conduct, and not coercive. It is therefore concluded and found that the record reveals no in- [fol. 55] stance of coercive conduct by union agents against employees of the parent corporation.

As to point (3), since that is the ultimate conclusion sought, discussion of it will be reserved.

As to points (4) and (5), they will be considered together, since they are related. Reserving for a moment appraisal of the major claim that strikers were coerced by misconduct against supervisors, the Trial Examiner turns to the question of coercion of "non-striking employees of the Charging Party and the employees of its parent corporation who witnessed or learned of such conduct." First as to "non-striking employees of the Charging Party." General Counsel specifies five such individuals, secretaries to management officials: Maynard, Welch, Reed, Petersen, and Carpenter. He contends that Maynard was prevented from entering an exchange and also learned of the Pat Wilson incident. It has been concluded and found, in section B-8 above, that Maynard was not physically or coercively prevented from entering an exchange, and as just pointed out the Wilson incident was not coercive. As to the claim that all five secretaries were "coerced" by "learning about" incidents of misconduct, the Trial Examiner

fails to comprehend the nature of General Counsel's reasoning. All five worked throughout the strike, none were molested or directly coerced. Does General Counsel mean that had these secretaries not learned of some coercive conduct against supervisors they might have joined the strikers? Second, as to the three employees of the parent corporation, Pat Wilson, Callehan and Hollinger—the latter being Wilson's co-worker who was told by Wilson of the event in the alley. General Counsel claims that Callehan witnessed the event described in section B-21. By her own testimony she could identify no one engaged in any misconduct. That the three General Telephone employees heard about alleged and actual incidents of misconduct against supervisors, the Trial Examiner has no doubt. But as in the case of the five secretaries, they continued to work, without direct interference. It is clear, undisputed, and concluded and found, that none of these secretaries or [fol. 56] General Telephone employees were deterred from working as they chose and were not coerced into abandoning their work and joining the strike. As to whether or not such employees were "subject to coercion," as General Counsel further claims in his brief, the Trial Examiner believes this point can only be resolved in the light of the nature of the misconduct itself. And since that factor also must be considered in appraising the merit of General Counsel's larger claim that strikers were likewise subject to coercion and were coerced, further comment will be held in abeyance.

Returning to the conclusion that strikers were coerced by their own misconduct against supervisors, through participation, witnessing, or reading about it in the newspapers. General Counsel cites W. T. Smith Lumber Co. (116 NLRB No. 64), the only case within the Trial Examiner's knowledge where legal (within the meaning of the Act) misconduct against supervisors has been found by the Board to be illegal misconduct against themselves, if they witnessed or heard about it.

The pertinent portion of that decision is quoted (p. 2):

> We find, in agreement with the Trial Examiner, that the striking employees herein were subjected to restraint by the misconduct of the pickets in their pres-

> ence, although such misconduct was not directed against the striking employees themselves. We think it reasonable to infer that such misconduct had the effect of coercively deterring any of the strikers from abandoning the strike and returning to work.

The Trial Examiner believes that the above-cited case and the case here under consideration are plainly distinguishable. In the former case there were substantial findings of actual coercion against nonstriking employees. In this case it has been found above that there was not a single instance of any coercive misconduct of pickets or strikers against any employee. Also in the Smith case it is apparent from the Intermediate Report, adopted by the Board, that the Respondent Union offered no evidence in pertinent rebuttal to the inference General Counsel was there seek-[fol. 57] ing—to the effect that misconduct against supervisors was coercive in its nature and effect upon strikers themselves. In this case about 185 strikers testified in rebuttal on this point.

At this juncture it may be well to focus upon certain stubborn and insurmountable facts. All of the coercive conduct found was directed against supervisors, particularly "outsiders," who were brought in by the parent corporation for some main purpose other than actually performing the work of strikers, since it is undisputed that most of them merely stood around a job site while 1 or 2 did the work. None of the coercive conduct was directed against employees. The one employee who had gone on strike, and who had abandoned the strike to return to work, was unmolested.

Do the above circumstances—plainly different from those existing in the Smith case—provide an irrebuttable foundation or premise from which it may be inferred, excluding any direct evidence to the contrary, that either in nature or effect the misconduct coerced or tended to coerce the strikers? The Trial Examiner does not believe so. It appears that General Counsel's evidence, as to the nature of the conduct and as to the individuals against whom it was wholly directed, creates only an uncertain premise. The governing rule, it seems to the Trial Examiner, is:

> A presumption of fact must not be drawn from premises which are uncertain, but must be founded on facts established by direct evidence. Presumptions may not be founded on presumptions.[25]

Furthermore:

> It follows from the nature of a presumption of fact that it is rebuttable.[26]

Contrary to General Counsel's contention that the Trial Examiner erred in admitting rebuttal testimony from the [fol. 58] strikers themselves, the Trial Examiner believes he would have erred had he excluded it.

About 185 strikers, mostly women, testified firmly and convincingly: (1) that they had had no desire to abandon the strike and their fellow strikers, and (2) that nothing they had participated in, witnessed, or heard about during the strike had prevented them from abandoning the strike.

The demeanor of these witnesses, as they testified, demonstrated their sincerity. They were bound together in a common cause, and as many of them said, in effect, they were resolved to remain on strike until all went back. Management and its supervisors, representatives of management, were their opponents in a long and bitter economic struggle. They, themselves, had been threatened with violence by the General Counsel of the Charging Party, as found above. The first act of violence, also as found above, occurred when Casteel ran into a picket with his truck. Comparative peace existed until the Charging Party brought in strangers—who stood around job sites without working—an invitation to violence.

On the basis of direct evidence, and upon reasonable inferences drawn from uncontradicted evidence, the Trial Examiner cannot reasonably conclude: (1) that misconduct by strikers against supervisors was designed or calculated to have a coercive effect upon either strikers or employees of the parent corporation; or (2) that such mis-

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[25] Corpus Juris Secundum, Vol. 31, par. 116, p. 727.

[26] Ibid., p. 726.

conduct either had or might have had a coercive effect upon strikers or employees of the parent corporation.[27]

Finally, and returning to point (3), the Trial Examiner concludes and finds that the misconduct of union agents described herein did not constitute restraint and coercion of employees in violation of Section 8 (b)(1)(A).

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

[fol. 59]

Conclusions of Law

1. Communications Workers of America, AFL-CIO, and Local No. 4372, Communications Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

2. The operations of the Charging Party occur in commerce within the meaning of the Act.

3. The Respondent Unions have not engaged in unfair labor practices as alleged in the complaint, within the meaning of Section 8(b)(1)(A) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in the case the Trial Examiner recommends that the complaint be dismissed in its entirety on the following grounds:

1. For the reason that the Charging Party, upon whose charge the complaint was issued, has shown its contempt for the right of its employees to engage in concerted activities as guaranteed by Section 7 of the Act. It has displayed its contempt by (a) threatening its employees with physical violence, (b) conspiring with hired "investigators" to engage in violence against certain strike leaders, and (c) engaging in actual physical violence against striking

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[27] To infer, in a vacuum, that coercion against an opponent is coercion against oneself hardly squares with the realities of industrial strife as revealed in this record.

employees. Such conduct demonstrates clearly that the filing of the charge itself was an attempt to abuse the Board's processes as part of an illegal effort to defeat employee rights which the Act guarantees.

2. For the reason that the allegations of unfair labor practices are without merit.

Dated at Washington, D. C., this 11th day of April, 1957.

C. W. Whittemore, Trial Examiner.

[fol. 78]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DECISION AND ORDER—May 1, 1958

On April 11, 1957, Trial Examiner C. W. Whittemore issued his Intermediate Report in this case, finding that the Respondents had not engaged in the alleged unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Company and the General Counsel filed exceptions to the Intermediate Report and supporting briefs. The Respondents filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no error which can plainly be termed prejudicial was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the relevant findings of fact made by the Trial Examiner, as indicated below, but not his conclusions or recommendations.

1. As found by the Trial Examiner, the record shows, and the Respondent labor organizations do not strenuously dispute, that during the course of an economic strike against the Company they engaged in many incidents of coercive conduct or misconduct designed to impede the Company's operations and intimidate the personnel engaging in such operations. On July 18, 1956, shortly after the strike began,

agents of the Respondents followed district manager Matz home from work in superior numbers.[1] On July 19, agents of the Respondents prevented Matz and foreman Kerns from leaving a Company exchange until police were called to the rescue. In the afternoon of July 29, as two Company supervisors were about to enter the Sciotoville exchange with an out-of-town person apparently not known to the pickets, agents of the Respondents prevented the "outsider" from entering. In the evening of the same day, a repetition of the incident occurred when the Respondents' agents admittedly stated that they wanted no "strangers" [fol. 79] to go in, but again the police were called to the rescue. On July 30 agents of the Respondents prevented Company personnel from entering the New Boston and Sciotoville exchanges with supplies. On about the same day the Respondents' agents also prevented employee Maynard from entering the Sciotoville exchange until escorted in by police. On August 13, as two "strangers" were accompanying Company supervisors repairing Company equipment on the Matthews' farm, agents of the Respondents warned the "strangers" to get out of town if they had any concern for their families. As the two "strangers" were dining at the Turkey Shop restaurant that evening, agents of the Respondents "asked" them if they were getting out of town that night; and a large group of local residents carried out the warning to leave town by overturning their car, an act for which the Respondents did not disclaim responsibility. On August 22 an agent of the Respondents threatened a Company repairman with violence for taking his photograph. While Company personnel were righting an overturned Company truck in Reverend Butterbaugh's yard on August 23, one of the Respondents' agents was overheard to remark that he was going to get blood and hair on a pick handle he was wielding. On August 24 a crowd of the Respondents' agents uttered insulting remarks and vile names at Company personnel repairing Company equipment at the Star Yard, and followed them back to town blowing their horns all the way.

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[1] Member Fanning would not rely on this incident as a violation of Section 8(b)(1)(A).

On September 18 Company personnel were engaged in some Company work on Woodland Avenue when one of a larger number of agents of the Respondents reached into a Company truck parked at the curb and opened the glove compartment. When one of this number was shoved back by a Company supervisor, the Respondents' agents engaged in violence and forced the Company personnel to leave.

2. The Trial Examiner found that some five of the foregoing incidents constituted coercive misconduct by the Respondents. He further found that the Respondents also engaged in various other incidents, including those summarized above. The Respondents did not except to these findings and we agree with the finding that the Respon- [fol. 80] dents engaged in such incidents. Unlike the Trial Examiner, however, we find that in all the instances above set forth the Respondents violated Section 8(b)(1)(A) of the Act.

The Trial Examiner concluded that the Respondents did not violate Section 8(b)(1)(A), because the incidents did not tend to restrain or coerce *employees* in the exercise of their statutory rights. He reasoned that the incidents of coercive misconduct had no tendency to restrain employees because they were directed against victims who at one time or another had been supervisors. However, we find that the object of one instance of misconduct (Maynard) was in fact an employee and not a supervisor, and the other victims were performing work of rank and file employees as strike replacements regardless of their quondam status as supervisors either of the Company or of related corporations from other areas. Moreover, even if the Respondents' misconduct were directed entirely against personnel acting as supervisors, which was not the case here, the circumstances were such that the Company's striking and non-striking employees were aware of it, and thereby tended to be restrained and coerced in their own exercise of the right to continue or discontinue striking as they wished.[2]

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[2] We do not agree with the Trial Examiner's attempt to distinguish the contrary authority of W. T. Smith Lumber Company,

The Trial Examiner further reasoned that the Respondents' misconduct, apparently even assuming that it restrained or coerced employees, was justified by the Company's own anti-union conduct, which disqualified it from filing charges against the Respondents and manifested a contemptuousness of its employees' statutory rights. However, the Act provided the Respondents with ready redress, if they believed the Company had engaged in misconduct by filing an appropriate charge with the General Counsel for his independent determination as to whether to proceed with the issuance and prosecution of a complaint. This [fol. 81] the Respondents did not do. In the circumstances of this case, we may not permit the Respondents to restrain or coerce employees in the exercise of their statutory rights merely because the Company may also have engaged in misconduct.[3]

Accordingly, we find that the Respondents restrained and coerced employees within the meaning of Section 8(b)-(1)(A) of the Act.

3. The General Counsel and the Company assail the Trial Examiner as prejudiced because of adverse ruling and recommendations, and criticize him because of certain comments he made during the hearing and in his Intermediate Report. Although we have found that the record as it stands warrants the 8(b)(1)(A) finding and cease and desist order sought, thus making it unnecessary to consider the attack, we have nevertheless given the matter consideration because of its importance in assuring the public of the fairness and impartiality of our hearings. Without going into detail, we wish it to be understood that we do not endorse those rulings and comments of the Trial Ex-

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116 NLRB 507, enf'd 243 F. 2d 745 (C. A. 5). The purported distinction was based in part on the irrelevant testimony of many employees that they were not in fact restrained or coerced by the respondents' misconduct. See also Brooklyn Spring Corporation, 113 NLRB 815, enf'd 243 F. 2d 539 (C. A. 2).

[3] See Sunset Line and Twine Co., 79 NLRB 1487, fn. 6. We do not agree with the Trial Examiner's purported analogy to N. L. R. B. v. Indiana & Michigan Electric Company, 318 U. S. 9, decided before the Act was amended so as to confer equal protection on the employees' right to refrain from union activity.

aminer which may give the appearance of partiality[4] by extending the case beyond the single issue presented by the General Counsel, to-wit, whether the Respondents had restrained or coerced employees in the exercise of their statutory rights. As evidence and findings that the Company may also have unlawfully interfered with these employee rights are irrelevant, we do not consider or adopt them.

ORDER

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondents, Communications Workers of America, AFL-CIO, and its Local No. 4372, and their respective officers, representatives, agents, successors and assigns:

[fol. 82] 1. Cease and desist from in any manner restraining or coercing employees of Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places in their business offices, meeting halls, and all other places where notices to their members are customarily posted, copies of the notice attached hereto marked "Appendix."[5] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after being duly signed by official representatives of the Respondents shall be posted by the Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

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[4] See Better Monkey Grip Co., 113 NLRB 938.

[5] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(b) Mail signed copies of the notice to the Regional Director for the Ninth Region for posting, Ohio Consolidated Telephone Company willing, at all locations where notices to the Company's employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after being duly signed by authorized representatives of the Respondents shall be forthwith returned to the Regional Director for such posting.

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., May 1, 1958.

Boyd Leedom, Chairman, Philip Ray Rodgers, Member, Stephen S. Bean, Member, Joseph Alton Jenkins, Member, John H. Fanning, Member, National Labor Relations Board.

(Seal)

[fol. 83]

APPENDIX

NOTICE TO ALL MEMBERS OF COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 4372, AND TO ALL EMPLOYEES OF OHIO CONSOLIDATED TELEPHONE COMPANY

Pursuant To

A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act as amended, we hereby notify you that:

We Will Not in any manner restrain or coerce employees of Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

Communication Workers of America,
AFL-CIO
(Labor Organization)

Dated..... By.....
(Representative) (Title)

Local 4372, Communication Workers
of America, AFL-CIO
(Labor Organization)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for sixty days from the date hereof, and must not be altered, defaced, or covered by any other material.

[fol. 84]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

NINTH REGION

Case No. 9-CB-327

In the Matter of:

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO and OHIO CONSOLIDATED TELEPHONE COMPANY.

Case No. 9-CB-328

In the Matter of:

LOCAL NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO and OHIO CONSOLIDATED TELEPHONE COMPANY.

Transcript of Testimony

Probate Court Room,
Scioto County Court House,
Portsmouth, Ohio,
Tuesday, December 11, 1956.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: C. W. Whittemore, Trial Examiner

APPEARANCES:

Daniel Dooley and Clifford L. Hardy, 1200 Ingalls Building, Cincinnati, Ohio, appearing on behalf of the General Counsel.

[fol. 85] John Alden Staker, Esq., 115 Masonic Temple, Portsmouth, Ohio; and

Richard L. Eisnaugle, Esq., 115 Masonic Temple, Portsmouth, Ohio; and

Kane and Koons, Esq., 13331 "G" Street, Northwest, Washington, 5, D.C., appearing on behalf of the Respondent.

Frost & Jacobs, by John C. Egbert, Esq., Union Central Building, Cincinnati, Ohio, appearing on behalf of Charging Party

* * * * * * *

Proceedings

OFFER IN EVIDENCE

Mr. Hardy: By stipulation and agreement among the parties I offer General Counsel's 2, 3, 4-A, -B, -C and 5 in evidence.

Whereupon the documents heretofore marked General Counsel's Exhibits Nos. 2, 3, 4-A, -B, -C, and 5 for identification were received in evidence.

* * * * * * *

Stipulation of Counsel

Mr. Dooley: I will read the following paragraph of a proposed stipulation to which I believe all Counsel assent.

1. That the Communications Workers of America, and the International Union is the recognized exclusive collective bargaining representative of the employees of [fol. 86] Ohio Consolidated Telephone Company in a unit of employees described by the most recently expired contract between the Communications Workers of America and

Ohio Consolidated Telephone Company as all employees, excluding guards, confidential employees, professional and supervisory employees as described in the Act.

2. That the Communications Workers of America and its predecessors have been recognized as the exclusive collective bargaining agent for the Company's employees for approximately a total of fourteen years.

That the most recent contract between the Communications Workers of America and the Ohio Consolidated Telephone Company covering employees of the Company was executed July 14, 1955, effective for an initial period of one year from July 15, 1955 to and including July 14, 1956, to continue in effect thereafter unless terminated by sixty days prior written notice by either party.

That the aforesaid contract executed July 14, 1955 was signed on behalf of Communications Workers of America by Frank A. Thernes, as Communications Workers of America representative, and on behalf of Ohio Consolidated Telephone Company by R. N. Cole, its President.

That by letter dated May 11, 1956 and signed by its President, R. N. Cole, the Company notified the Communications Workers of America of its intent to terminate the said contract on July 14, 1956.

That by letter dated May 14, 1956 and signed by its President, J. A. Beirne, the Communications Workers of America notified the Company of its intent to terminate the contract between them on July 14, 1956 and by the same letter the Communications Workers notified the Company that its duly constituted bargaining committee subject to be supplemented or modified to negotiate for a new contract would consist of Committee Chairman Frank A. Thernes of Communications Workers of America International Representative; Robert B. Arnett, President of Local 4372, Communications Workers of America; Carl A. Mitchell, President of Local 4373, Communications Workers of America; and Donald H. Rupp, President of Local 4374, Communications Workers of America.

[fol. 87] That thereafter the Communications Workers of America by and through the aforesaid Bargaining Committee with the duly appointed representatives of the Com-

pany on various dates to negotiate concerning terms for a new contract; that on July 11, 1956, J. Curtis Fletcher, National non-Bell, Director of the Communications Workers of America joined its Bargaining Committee as Member and Co-Chairman thereof, and thereafter participated in negotiations with Ohio Consolidated Telephone Company in this capacity.

That the Communications Workers of America Bargaining Committee and the Company's representatives did not agree on a new contract by July 14, 1956 expiration date of their contract, and finally that at approximately 12:01 a.m., July 15, 1956, the employees of Ohio Consolidated Telephone Company and the bargaining unit represented by the Communications Workers of America went on strick, (sic) which strike has continued to date.

* * * * * * *

Trial Examiner: Very well. Then I will ask Counsel for the Union, do you join in the stipulation?

Mr. Eisnaugle: We do.

Trial Examiner: And for the charging Party?

Mr. Egbert: Yes, Your Honor.

Trial Examiner: Very well. Thank you very much. The stipulation has been recorded and is accepted as evidence.

* * * * * * *

[fol. 98] GLEN EVANS, a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined, and testified as follows:

Direct examination.

* * * * * * *

[fol. 99] Q. Now, who is Pat Bower?

A. Mrs. Bower is a traveling chief operator.

Q. And where does she live?

A. Jackson, Ohio.

Q. And by who is she employed?

A. General Telephone Company.

Q. And by whom was she employed on July 29?
A. General Telephone Company.
Q. And who is Mr. Zachman?
A. Mr. Zachman is Public Relations man for General Telephone Company. He is employed by the General Telephone Company.

* * * * * * *

[fol. 112] Cross examination.

* * * * * * *

[fol. 113] Q. And by whom was he employed, do you know, at that time?

* * * * * * *

A. Mr. Humes is basically employed by the General Telephone Corporation, but he was under the direction of Ohio Consolidated and his company was billing our company for wages and salaries.

By Mr. Staker:

Q. How do you know that?
A. Because I was in the accounting department and was in a position to see those bills.

* * * * * * *

[fol. 126] Oscar Newman, a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 138] Cross examination.

By Mr. Eisnaugle:

Q. Now, at the time you were attempting to bring Mrs. Bauer into the building, she wasn't an employee of the Ohio Consolidated Telephone Company, was she?
A. She was an employee of the General Telephone—

* * * * * * *

[fol. 141] MAYNARD MATZ, a witness called by and on behalf of the General Counsel having been first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 142] By Mr. Dooley:

Q. Mr. Matz, with what personnel, if any, did the Company continue to give service after the strike began?

A. The personnel used after the strike began were officials of the Company, supervisors, secretaries, and all other employees not in the bargaining unit.

* * * * * * *

[fol. 143] Q. Now, during the period of this strike in which you engaged in this maintenance work, did you use persons, other persons in addition to those persons?

A. Oh, yes; we were unable to keep up with the work; the workload got so great due to vandalism, that we requested additional help, and it was provided from the General Telephone Company of Ohio.

Q. Mr. Matz, what is the General Telephone Company of Ohio?

A. Well, it's also a part of the General system, the same as Ohio Consolidated is a part of the General system.

Q. Well, will you explain as nearly as you can, give us some explanation of your reference to the General system? What is the General system?

A. Well, the General system is a group of companies in the whole United States. We have General Telephone Company of Ohio, General Telephone Company of Indiana, General Telephone Company of Illinois, so forth; the Ohio Consolidated is an incorporation in the State of Ohio, and also a part of the General system.

* * * * * * *

[fol. 151] Q. And Mr. Gehring?

A. Gehring is a construction supervisor of General Telephone at Jackson, Ohio.

Q. And Mr. Foster?

A. Mr. Foster is also a construction supervisor of the General Telephone Company of Ohio, Jackson, Ohio.

* * * * * * *

[fol. 158] Q. Now, Mr. Pearch—how do you spell Mr. Pearch's name?

A. P-e-a-r-c-h.

Q. Does he work for Ohio Consolidated Telephone Company regularly?

A. No, he don't. He regularly works for the General Telephone Company of Ohio.

Q. Was he on this location performing services for Ohio Consolidated?

A. Yes, he was.

* * * * * * *

[fol. 172] Cross examination.

* * * * * * *

Q. Well, then, was there a Mr. Pierce with you up there?

A. Yes, sir.

Q. And by whom is he employed?

A. He is employed by the General Telephone Company at Marion.

Q. And was there a Mr. Wemple with you?

A. That is correct.

Q. And by whom is he employed?

A. General Telephone Company of Ohio, New Philadelphia.

Q. And how about Mr. Herman, was there a Mr. Herman with you?

A. That is right.

Q. And by whom is he employed?

A. General Telephone Company of Ohio at New Philadelphia.

Q. And was there a Mr. Casteel?

A. Yes.

Q. And by whom is he employed?

A. General Telephone Company of Ohio.

Q. And was there a Mr. Seward with you?

A. Yes.

Q. And by whom was he employed?
A. General Telephone Company of Ohio.

* * * * * * *

[fol. 176] GEORGE GHEARING, a witness for and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Dooley:

* * * * * * *

[fol. 177] Q. Who is your employer?
A. General Telephone Company of Ohio.

* * * * * * *

[fol. 205] DONALD M. SEWARD, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Dooley:

* * * * * * *

Q. What is your occupation?
A. Construction supervisor, General Telephone Company of Ohio.
Q. Now, beginning in August, 1956, did you have occasion to perform services for Ohio Consolidated Telephone Company in the Portsmouth area?
A. Yes, sir.

* * * * * * *

[fol. 208] Cross examination.

By Mr. Eisnaugle:

Q. And who is Mr. Wentzel?
A. He is from Pennsylvania, too.
Q. Do you know his position?
A. No.

Q. What company does he work for?
A. General Telephone Company of Pennsylvania.

* * * * * * *

[fol. 209] By Mr. Eisnaugle:

Q. Who is Mr. Warden?
A. He is construction supervisor or superintendent.
Q. For what company?
A. Bluefield, W. Va.
Q. That would be General Telephone of West Virginia?
A. Yes, sir.
Q. And who was Mr. Rice?
A. Rice is—I don't know what his title was. He is from General Telephone Company of the southwest.
Q. Do you know what state in particular?
A. Texas.
Q. What about Mr. Rose?
A. I am not sure but I think he is from Michigan.
Q. Mr. White?
A. From Texas.
Q. How about Mr. Hounhsall?
A. West Virginia.

* * * * * * *

[fol. 396]

GENERAL COUNSEL'S EXHIBIT No. 1-C

(See Opposite) ☞

GENERAL COUNSEL'S EXHIBIT No. 1-C

FORM NLRB-508 (7-52)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved Budget Bureau No. 64-R003.5

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

CASE NO. 9-CB-328

DATE FILED October 18, 1956 D.D.D.

COMPLIANCE STATUS CHECKED BY:

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME
Communications Workers of America Local No. 4372 (CIO)

ADDRESS
c/o Robert Arnett, Portsmouth, Ohio

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION (8b) SUBSECTION(S) _____ (List subsections) OF THE NATIONAL LABOR RELATIONS ACT,

AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

In that the Communications Workers of America Local No. 4372 (CIO), by its officers, agents, representatives, members and others acting in concert with them, has on various dates since July 14, 1956 restrained and coerced the employees of Ohio Consolidated Telephone Company in the exercise of the rights guaranteed them in Section 7 of the Act by the following acts and conduct: physical assaults upon employees of the Company and its supervisors; shooting into supervisors' and employees' homes and living quarters; threatening employees and supervisors with violence, physical assaults, bodily harm and economic reprisals; using vile, obscene and abusive language; mass picketing and the assembling of large, boisterous, menacing, violent and riotous crowds and mobs; the breaking of windows and battering down of doors while employees and supervisors were at work and other assaults upon the working spaces, buildings and facilities of the Company; the malicious sabotage and destruction of the property of employees and supervisors, and property and facilities of the Company, which has continued unrestrained by effective law enforcement on the part of local and state authorities.

3. NAME OF EMPLOYER
Ohio Consolidated Telephone Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)
Forty-four counties in the State of Ohio, with service rendered to parts of Lewis and Greenup Counties in the Commonwealth of Kentucky.

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)	6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE	7. NO. OF WORKERS EMPLOYED
Public Utility	Telephone and other communication service	584

8. FULL NAME OF PARTY FILING CHARGE
Ohio Consolidated Telephone Company

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)	10. TEL. NO.
Masonic Temple Bldg., Portsmouth, Ohio	EL 3-3000

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

By C. A. Atwood
(Signature of representative or person making charge)

October 18, 1956
(Date)

C. A. Atwood, Attorney
(Title or office, if any)

GC-1-C

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 83-5790**

[fol. 397]

GENERAL COUNSEL'S EXHIBIT No. 1-D

(See Opposite) ☞

GENERAL COUNSEL'S EXHIBIT No. 1-D

FORM NLRB-508 (7-52)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R003.5

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS: *File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

CASE NO. 9-CB-327

DATE FILED October 18, 1956 D.D.D.

COMPLIANCE STATUS CHECKED BY:

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME

Communications Workers of America (CIO)

ADDRESS

1808 Adams Mill Road, N.W., Washington 9, D. C.

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION (8b) SUBSECTION(S) _____ OF THE NATIONAL LABOR RELATIONS ACT,
(List subsections)
AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE *(Be specific as to facts, names, addresses, plants involved, dates, places, etc.)*

In that the Communications Workers of America (CIO), by its officers, agents, representatives, members and others acting in concert with them, has on various dates since July 14, 1956 restrained and coerced the employees of Ohio Consolidated Telephone Company in the exercise of the rights guaranteed them in Section 7 of the Act by the following acts and conduct: physical assaults upon employees of the Company and its supervisors; shooting into supervisors' and employees' homes and living quarters; threatening employees and supervisors with violence, physical assaults, bodily harm and economic reprisals; using vile, obscene and abusive language; mass picketing and the assembling of large, boisterous, menacing, violent and riotous crowds and mobs; the breaking of windows and battering down of doors while employees and supervisors were at work and other assaults upon the working spaces, buildings and facilities of the Company; the malicious sabotage and destruction of the property of employees and supervisors, and property and facilities of the Company, which has continued unrestrained by effective law enforcement on the part of local and state authorities.

3. NAME OF EMPLOYER

Ohio Consolidated Telephone Co., Masonic Temple Bldg., Portsmouth, Ohio

4. LOCATION OF PLANT INVOLVED *(Street, City, and State)*

Forty-four counties in the State of Ohio, with service rendered to parts of Lewis and Greenup Counties in the Commonwealth of Kentucky

5. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*	6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE	7. NO. OF WORKERS EMPLOYED
Public Utility	Telephone and other communication service	584

8. FULL NAME OF PARTY FILING CHARGE

Ohio Consolidated Telephone Company

9. ADDRESS OF PARTY FILING CHARGE *(Street, City, and State)*	10. TEL. NO.
Masonic Temple Bldg., Portsmouth, Ohio	EL 3-3000

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY C. A. Atwood
(Signature of representative or person making charge)

C. A. Atwood, Attorney
(Title or office, if any)

October 18, 1956
(Date)

GC-1-D

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

69

GPO 83-37888

[fol. 399]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONSOLIDATED COMPLAINT

It having been charged by Ohio Consolidated Telephone Company (herein called the Employer) that the Communications Workers of America, AFL-CIO (herein called Respondent CWA), and Local No. 4372, Communications Workers of America, AFL-CIO (herein called Respondent Local 4372), have engaged in, and are now engaging in, certain unfair labor practices affecting commerce as defined in the Labor Management Relations Act of 1947 (Taft-Hartley Act of June 22, 1947, c. 120, 61 Stat. 136, as Amended, 29 USC Sec. 141, et seq. (1952 Ed.)), (herein referred to as the Act), the General Counsel of the National Labor Relations Board (herein called the Board) on behalf of the Board, by the Acting Regional Director for the Ninth Region of the Board, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, issues this Consolidated Complaint and alleges as follows:

1. The Employer, a public utility, is now and during all times material hereto has been engaged in the business of providing local and long distance telephone service to subscribers in 40 communities in the State of Ohio.

2. The Employer in the course and conduct of its business during the 12 month period ended December 31, 1955, received for its telephone services both within and without the State of Ohio total revenues in excess of $4,900,000.

3. The Employer is and at all times material hereto has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and is and has been at all times material hereto an Employer within the meaning of Section 2, Subsection (2) of the Act.

4. The Respondent CWA and Respondent Local 4372 are each a labor organization within the meaning of Section 2(5) of the Act.

5. On or about July 14, 1956, the Respondent CWA, as the recognized collective bargaining representative of an agreed upon unit of the Employer's employees, and Respondent Local 4372, and each of them, called, authorized, [fol. 400] sanctioned, and approved a strike against the Employer, which strike has since been continuously carried on jointly by Respondent CWA and Respondent Local 4372, and is now being jointly carried on by said Respondents.

6. Robert Arnett and Eugene Arms are, and were at all times material hereto, President and Vice-President respectively of Respondent Local 4372, and are and were officers and agents of Respondent Local 4372, and Respondent CWA.

7. On or about July 14, 1956, Respondent Local 4372, by and through its officer and agent, Robert Arnett, appointed William T. Hipple, Virgil Pierce, Jack L. Keyser, and Russell Lewis, with the approval and ratification of its membership, to act as Strike Directors to conduct and direct the conduct of the aforesaid strike by members of Respondent Local 4372, and the aforesaid Hipple, Pierce, Keyser, and Lewis at all times material thereafter served as Strike Directors of Respondent Local 4372.

8. By virtue of their appointment and position as Strike Directors, William T. Hipple, Virgil Pierce, Jack L. Keyser, and Russell Lewis are, and were at all times material hereto, agents and representatives of Respondent Local 4372, and Respondent CWA.

9. On or about July 14, 1956, the aforesaid Strike Directors appointed Robert Johnson, Carl Doty, Russell Cook, and Frank Farley to act as picket captains of Respondent Local 4372, to conduct and direct the conduct of picketing by members of Respondent Local 4372, and the aforesaid Johnson, Doty, Cook, and Farley at all times material thereafter served as picket captains on behalf of Local 4372.

10. By virtue of their appointment as picket captains, Robert Johnson, Carl Doty, Russell Cook, and Frank Far-

ley are, and were at all times material hereto, agents and representatives of the Respondent Local 4372, and Respondent CWA.

11. On or about July 14, 1956, Respondent Local 4372 elected Norman Bush as Strike Director for Local 4372, for the purpose of conducting and directing the conduct of the [fol. 401] aforesaid strike by members of Local 4372. Norman Bush thereafter served as Strike Director until on or about August 22, 1956. On or about August 22, 1956, Norman Bush was appointed picket captain of Local 4372 by the Strike Directors named in paragraph 7, above, and served in this capacity at all times material hereafter.

12. Norman Bush, by virtue of his election as Strike Director, and his subsequent appointment as picket captain, as described in paragraph 11 above, is and at all times material hereto has been, an agent and representative of Respondent Local No. 4372, and Respondent CWA.

13. Commencing on or about July 14, 1956, and at all times thereafter, the Respondent CWA and the Respondent Local 4372, in the course and conduct of the aforesaid strike, have, by and through their agents and representatives, restrained and coerced, and are now restraining and coercing employees of the Employer in the exercise of the rights guaranteed them in Section 7 of the Act, by inter alia: using and threatening to use force and violence against the supervisors and employees of the Employer; impeding or preventing ingress and egress of the Employer's supervisors and employees, and others, to and from the Employer's premises; and destroying and threatening to destroy property of the Employer.

14. Commencing on or about July 14, 1956, the Respondent CWA and the Respondent Local 4372, in the course and conduct of the aforesaid strike, have, by and through their officers, agents, and representatives, restrained and coerced, and are now restraining and coercing, the employees of the Employer in the exercise of the rights guaranteed them in Section 7 of the Act, as described in paragraph 13 above, by engaging in or participating in, inter alia, the following activities or incidents:

(1) From July 15, to August 4, 1956, mass picketing and picketing at the Employer's premises in Portsmouth, New Boston, and Sciotoville, Ohio, in such a manner as to impede or physically prevent the Employer's supervisors, employees, and others from entering or leaving the Employer's premises.

[fol. 402] (2) On or about July 18, 1956, by and through their agents William Hipple, Jack L. Keyser and Angelo Crapyou, and others not specifically known at this time, following supervisory personnel of the Employer in superior inimical numbers from the Employer's premises in Portsmouth, Ohio, to various destinations away from the Employer's premises.

(3) On or about July 24, 1956, in the vicinity of Lincoln and Robinson Streets in Portsmouth, Ohio, by and through their agents, Russell Cook, Jack Keyser, Virgil Pierce, Russell Lewis, and others not specifically known at this time, cursing, harassing, threatening, and interfering with the work of, supervisory personnel of the Employer.

(4) On or about August 3, 1956, at the Employer's premises located at Dewey and Albert Streets in Portsmouth, Ohio, by and through their agents, William T. Hipple, Russell Cook, Lewis Gregory, and James Birchfield, preventing supervisory personnel of the Employer from entering the Company's premises by cursing, threatening, assaulting, striking and throwing missiles at them.

(5) On or about August 12, 1956, enroute from Portsmouth, Ohio to Columbus, Ohio, and in the vicinity of the City of Columbus, Ohio, by and through their agents William T. Hipple and Emmanuel Pickel, obstructing and halting vehicles driven by supervisory or managerial personnel of the Employer, and running into one of such vehicles.

(6) On or about August 13, 1956, in the vicinity of Blaine-Matthews farm near Route 73 in the vicinity of Portsmouth, Ohio, and on the highway between the

aforesaid location and Portsmouth, Ohio, by and through their agents, Russell Cook, Angelo Crapyou, Wayne Baer, Robert Johnson, William Stahler, ——— Wesley, Daniel Chestnut, ——— Bartlett and ——— Ervin, threatening, cursing, interfering with the work of supervisory personnel of the Employer, and menacing said supervisory personnel with "sling shots."

[fol. 403] (7) On or about August 13, 1956, at a location near the Elks Country Club, and Route 73 in the vicinity of Portsmouth, Ohio, by and through their agents, Richard Kalb, Frank Born, Lewis T. Gregory, Harold Elsesser, Raymond Martin, —— Drake, and all of those named in subparagraph (6), above, throwing rocks at and cursing supervisory personnel of the Employer and otherwise harassing, menacing, and interfering with the work of said supervisory personnel.

(8) On or about August 13, 1956, at the Turkey Shop Restaurant, at 30th and Chillicothe Streets in Portsmouth, Ohio, by and through their agents, William T. Hipple, Russell Cook, Jack L. Keyser, Virgil Pierce, Robert Johnson, Carl Doty, Eugene Shephard, Russell Lewis, and approximately 12 others not specifically known at this time, cursing, threatening, and otherwise menacing supervisory personnel of the Employer, and overturning an automobile containing supervisory personnel of the Employer.

(9) On or about August 22, 1956, at approximately 9:00 or 10:00 o'clock in the morning, in the vicinity of an alley between Lincoln and Offnere Streets in Portsmouth, Ohio, by and through their agents, Norman Bush, Robert Johnson, Floyd Book, Emmanuel Pickel, and others not specifically known at this time, cursing, threatening, throwing objects at supervisors of the Employer, thereby forcing them to abandon their assigned duties.

(10) On or about August 22, 1956, in the afternoon, at the location described in subparagraph (9) above, by and through their agents William T. Hipple, Norman Bush, Russell Lewis, Jack L. Keyser, Robert John-

son, Frank Born, and approximately 10 others not specifically known at this time, assembling in a large crowd around supervisory personnel engaged in working, exhibiting a firearm, cursing, and threatening supervisory personnel with serious bodily harm, and threatening said supervisors with rocks.

[fol. 404] (11) On or about the afternoon of August 22, 1956, at a location known as the Home Supply Parking Lot on Route 73 in the vicinity of Portsmouth, Ohio, by and through their agents William T. Hipple, Norman Bush, Robert Johnson, Russell Cook, and others not specifically known at this time, assembling in a group around supervisory personnel of the Employer performing their assigned duties, and carrying sticks and clubs, cursing and threatening supervisors with serious bodily harm, throwing rocks, and following said supervisors from the aforesaid location to the Company premises at 824 Seventh Street in Portsmouth, Ohio, and there throwing rocks at said supervisors.

(12) On or about August 23, 1956, at approximately 7:30 A.M., at the Employer's premises at 824 Seventh Street in Portsmouth, Ohio, by and through their agents William T. Hipple, Norman Bush, Russell Cook, Frank Born, James Birchfield, and others not specifically known at this time, throwing tomatoes at supervisory personnel in the Employer's parking lot at said premises.

(13) On or about August 23, 1956, at a residence in or near West Portsmouth, Ohio, by and through their agents, William T. Hipple, Norman Bush, Russell Cook, Angelo Crapyou, Raymond Martin, Frank Born, and approximately 15 others not specifically known at this time, assembling in a superior intimidating force around a group of supervisory personnel of the Employer, carrying wooden clubs and threatening said supervisors with bodily harm.

(14) On or about August 24, 1956, at approximately 11:00 A.M., near a location between New Boston and

Sciotoville, Ohio, known as the Star Yard, by and through their agents, William T. Hipple, Norman Bush, Robert Johnson, Virgil Pierce, Carl Doty, Angelo Crapyou, James Birchfield, ——— Bartlett, and approximately 15 others not specifically known at this time, assembling in a superior inimical group near supervisors performing their assigned duties, throwing [fol. 405] stones at said supervisors, thereby seriously endangering them, following said supervisors from this location to the Employer's premises at 824 Seventh Street in Portsmouth, Ohio, and there intimidating said supervisors by assembling in a large group at the Company premises.

(15) On or about the afternoon of August 24, 1956, at or near the location of the Star Yard, described in subparagraph (14) above, by and through their agents, William T. Hipple, Norman Bush, Robert Johnson, Virgil Pierce, Carl Doty, Angelo Crapyou, Russell Cook, Jack L. Keyser, Lewis T. Gregory, James Birchfield, ——— Bartlett, and approximately 15 others not specifically known at this time, assembling in a large group around supervisors performing their assigned duties, carrying clubs, ax handles, and baseball bats, throwing stones at supervisors, assaulting and battering supervisors with stones and rocks, threatening supervisors with serious bodily harm, following said supervisors from the above-described location to the Employer's premises at 824 Seventh Street, Portsmouth, Ohio, in automobiles and harassing and interfering with the said supervisors on the highway, and blocking the vehicle entrances to the Employer's premises at 824 Seventh Street in Portsmouth, Ohio.

(16) On or about August 29, 1956, by and through their agents, Juanita Conley, Janet Ward, Ruth Beadle and others not specifically known at this time, stoning vehicles driven by supervisory personnel of the Employer enroute from West Portsmouth, Ohio, to the Employer's premises at 824 Seventh Street, Portsmouth, Ohio, and there stoning said vehicles, supervisors, and premises.

(17) On or about September 6, 1956, at or near the entrance to the Employer's Sciotoville, Ohio Exchange, at approximately 7:30 A.M., by and through their agents, Juanita Conley, Janet Ward, Ruth Beadle, and Pansy Smith, assaulting and battering two female supervisory employees of the Employer who were attempting to enter the Employer's premises.

[fol. 406] (18) On or about September 17, 1956, at approximately 10:15 P.M. at the Ett-Mar Motel, on Kendall Avenue in Portsmouth, Ohio, by and through their agents, Frank Born, Juanita Conley, Janet Ward, and Ruth Beadle, assaulting and battering Company supervisors by throwing tomatoes, and calling them obscene names.

(19) On or about September 18, 1956, at approximately 10:00 A.M., o'clock, at a location on Woodland Avenue in Sciotoville, Ohio, by and through their agents, William T. Hipple, Norman Bush, William Stahler, Robert Johnson, Frank Born, Hollie Bloomfield, James Birchfield, ——— Bartlett, Richard Kalb, Raymond Martin, and approximately 25 others not specifically known at this time, assaulting and battering supervisory personnel of the Employer with clubs, hammers, and fists.

(20) On or about September 18, 1956, on Linden Avenue near Gallia Street in Portsmouth, Ohio, by and through their agents, Norman Bush, Robert Johnson, James Birchfield, ——— Bartlett, ——— Brown, and others not specifically known at this time, attacking, assaulting and battering with fists, lead cables, clubs, and hammers, a group of supervisory personnel engaged in performing duties assigned them by the Employer.

(21) On or about October 4, 1956, at the location of each of the Employer's Exchanges in New Boston, Ohio, Sciotoville, Ohio, and Dewey and Albert Streets in Portsmouth, Ohio, assembling together with others in a large crowd at each of the aforesaid locations, and there engaging in and inciting others to engage in de-

struction of the Employer's property and intimidation of supervisory personnel of the Employer by throwing missiles, and other physical means.

(22) On or about October 4, 1956, at the Ett-Mar Motel on Kendall Avenue in Portsmouth, Ohio, assembling together with others in a large crowd and there engaging in and inciting others to engage in stoning [fol. 407] of said Motel, in which supervisory and managerial personnel of the Employer were residing.

(23) On or about October 5, 1956, driving past the Ett-Mar Motel on Kendall Avenue in Portsmouth, Ohio, and there discharging a firearm at the said Motel buildings, in which supervisory and managerial personnel of the Employer were residing.

(24) On or about October 11, 1956, by and through their agents, Juanita Conley, Janet Ward, Ruth Beadle, and another not specifically known at this time, assaulting and battering a supervisor (employed by the Employer), in the vicinity of an alley behind 824 Seventh Street, Portsmouth, Ohio.

(25) On or about October 11, 1956, at the location of each of the Employer's Exchanges in New Boston, Ohio, Sciotoville, Ohio, and Dewey and Albert Streets in Portsmouth, Ohio, assembling together with others in a large crowd at each of the aforesaid locations, and there engaging in and inciting others to engage in destruction of the Employer's property and intimidation of supervisory personnel of the employer by throwing missiles, and other physical means.

(26) On or about October 15, 1956, at the location of each of the Employer's Exchanges in New Boston, Ohio, Sciotoville, Ohio, and Dewey and Albert Streets in Portsmouth, Ohio, assembling together with others in a large crowd at each of the aforesaid locations, and there engaging in and inciting others to engage in destruction of the Employer's property and intimidation of supervisory personnel of the Employer by throwing missiles, and other physical means.

15. By the acts and conduct described in paragraphs 13 and 14 above, and by each of them, the Respondent CWA and Respondent Local 4372 have engaged in and are engaging in unfair labor practices as defined in Section 8(b)(1)-(A) of the Act.

16. The acts and conduct of Respondents described in paragraphs 13 and 14 above, occurring in connection with [fol. 408] the Employer's operations as described in paragraphs 1, 2, and 3, above, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several States of the United States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The above described acts and conduct of the Respondent CWA and Respondent Local 4372 constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A), and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the Ninth Region of the Board, issues this Consolidated Complaint against the Communications Workers of America, AFL-CIO, and Local No. 4372, Communications Workers of America, AFL-CIO, Respondents herein.

Dated at Cincinnati, Ohio, this 26th day of November, 1956.

George M. Dick, Acting Regional Director, Ninth Region, National Labor Relations Board, 1200 Ingalls Building, 6 E. Fourth Street, Cincinnati 2, Ohio.

[fol. 409]

GENERAL COUNSEL'S EXHIBIT No. 1-H

ANSWER OF COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, TO COMPLAINT

Now come the Communications Workers of America, AFL-CIO, a named respondent in the above entitled cause by J. Curtis Fletcher, National Director of said International Union, and answers to the complaint dated November 26, 1956, as follows:

1. Denied
2. Denied
3. Admitted
4. Denied
5. Denied
6. Denied
7. Denied
8. Denied
9. Denied
10. Denied
11. Denied
12. Denied
13. Denied
14. Denied

(1) Denied
(2) Denied
(3) Denied
(4) Denied
(5) Denied
(6) Denied
(7) Denied
(8) Denied
(9) Denied
(10) Denied
(11) Denied
(12) Denied
(13) Denied
(14) Denied
(15) Denied
(16) Denied

[fol. 410]

(17) Denied
(18) Denied
(19) Denied
(20) Denied
(21) Denied
(22) Denied
(23) Denied
(24) Denied
(25) Denied
(26) Denied

15. Denied
16. Denied
17. Denied

Wherefore, the Communications Workers of America, AFL-CIO, asks that the complaint be dismissed.

Communications Workers of America,
AFL-CIO,

By: /s/ J. CURTIS FLETCHER

[fol. 411]

State of Ohio
County of Scioto } ss.:

On this 4th day of December A. D., 1956, personally appeared before me the above named J. Curtis Fletcher, who made oath and said that he has read the foregoing answer by him subscribed, that he is familiar with its contents, that the same is true to the best of his knowledge and belief and that he is duly authorized to sign said answer for and in behalf of the Communications Workers of America, AFL-CIO.

/s/ RICHARD L. EISNAUGLE,
Notary Public, State of Ohio.

My commission expires 9-14-1959.

(Seal)

/s/ JOHN ALDEN STAKER,
/s/ RICHARD L. EISNAUGLE,
Attorneys for
Communications Workers of America, AFL-CIO
Masonic Temple Building,
Portsmouth, Ohio,
Elmwood 3-1133.

Charles V. Koons,
Kane & Koons
General Counsel, AFL-CIO,
1331 G Street, N. W.,
Washington 5, D. C.

I hereby certify that on the 4th day of December, 1956 I served the foregoing Answer on the Ohio Consolidated Telephone Company, Post Office Box 70, Highway 30 South, Old Albers Building, Marion, Ohio, by mailing a true copy thereof to Clare E. Williams, its President at the said address.

/s/ RICHARD L. EISNAUGLE,
Counsel for Defendants.

[fol. 412]

GENERAL COUNSEL'S EXHIBIT No. 1-I

ANSWER OF LOCAL No. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, TO COMPLAINT

Now comes Local No. 4372, Communications Workers of America, AFL-CIO, a named respondent in the above entitled cause by Robert Arnett, President of same Local Union and answers to the complaint dated November 26, 1956, as follows:

1. Denied
2. Denied
3. Admitted
4. Denied
5. Denied
6. Denied
7. Denied
8. Denied
9. Denied

10. Denied
11. Denied
12. Denied
13. Denied
14. Denied

(1) Denied
(2) Denied
(3) Denied
(4) Denied
(5) Denied
(6) Denied
(7) Denied
(8) Denied
(9) Denied
(10) Denied
(11) Denied
(12) Denied
(13) Denied
(14) Denied
(15) Denied
(16) Denied

[fol. 413]

(17) Denied
(18) Denied
(19) Denied
(20) Denied
(21) Denied
(22) Denied
(23) Denied
(24) Denied
(25) Denied
(26) Denied

15. Denied
16. Denied
17. Denied

Wherefore, Local No. 4372, Communications Workers of America, AFL-CIO, asks that the complaint be dismissed.

Local No. 4372,
Communications Workers of America,
AFL-CIO,
By: /s/ Robert Arnett.

[fol. 414]

State of Ohio }
County of Scioto } ss.:

On this 4th day of December A.D., 1956, personally appeared before me the above named Robert Arnett, who made oath and said that he had read the foregoing answer by him subscribed, that he is familiar with its contents, that the same is true to the best of his knowledge and belief and that he is duly authorized to sign said answer for and in behalf of Local No. 4372, Communications Workers of America, AFL-CIO.

/s/ Richard L. Eisnaugle,
Notary Public, State of Ohio.

My commission expires 9-14-1959.

(Seal)

/s/ John Alden Staker,
/s/ Richard L. Eisnaugle,
Attorneys for
Communications Workers of America, AFL-CIO,
Masonic Temple Building,
Portsmouth, Ohio,
Elmwood 3-1133.

Charles V. Koons,
Kane & Koons,
General Counsel, AFL-CIO,
1331 G Street, N. W.,
Washington 5, D. C.

I hereby certify that on the fourth day of December, 1956, I served the foregoing Answer on the Ohio Consolidated Telephone Company, Post Office Box 70, Highway 30 South, Old Albers Building, Marion, Ohio, by mailing a true copy thereof to Clare E. Williams, its President at the said address.

/s/ Richard L. Eisnaugle,
Counsel for Defendants.

[fol. 415]

GENERAL COUNSEL'S EXHIBIT No. 1-J

MOTION TO AMEND CONSOLIDATED COMPLAINT

To: Hon. C. W. Whittemore,
Trial Examiner, N.L.R.B.,
Washington 25, D. C.

The General Counsel of the National Labor Relations Board, by Daniel P. Dooley and Clifford L. Hardy, Counsel for the General Counsel in the above-entitled proceeding, pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 6, as amended, moves that the Trial Examiner amend the Consolidated Complaint in the above-entitled proceeding by adding to Paragraph 14 thereof the following sub-paragraph, numbered (27):

> "(27) On or about August 31, 1956, on Kendall Avenue in Portsmouth, Ohio, by and through their agents Russell Cook, Russell Lewis, Janet Ward, Juanita Conley and others, assaulting and battering supervisors and employees employed by or performing services for the Employer, in the presence of supervisors and employees of the Employer and other persons who perform services for the Employer."

Dated at Cincinnati, Ohio, this 27th day of December, 1956.

(s) Daniel P. Dooley,
Counsel for General Counsel.

(s) Clifford L. Hardy,
Counsel for General Counsel,
Ninth Region, National Labor Relations Board,
1200 Ingalls Building, 6 E. Fourth St.,
Cincinnati 2, Ohio.

[fol. 416]

GENERAL COUNSEL'S EXHIBIT No. 4-A

May 11, 1956

Mr. J. A. Beirne, President,
Communications Workers of America,
1808 Adams Mill Road, N. W.,
Washington, 9, D. C.

Dear Mr. Beirne:

Ohio Consolidated Telephone Company hereby notifies you of termination of the currently effective labor agreement between Ohio Consolidated Telephone Company and Communications Workers of America as of the close of its anniversary date of July 14, 1956. This notice of termination is consistent with Article XXVIII, Duration of Contract, Section 1, Paragraph (a).

This notice of termination is not to be construed as a withdrawal of recognition of C.W.A. as exclusive collective bargaining representative. Rather, it represents the desire of our company that any forthcoming negotiations will permit the development of a new labor agreement adequately comprehensive for effective day to day application, and generally consistent with current and projected operating conditions within our company.

The fact of termination, in accordance with this notice, does not preclude timely mutual agreement for temporary extension of the original provisions beyond July 14, 1956, in the event that an extension should prove advantageous for purposes of collective bargaining and to the continuation of past effective relationships between our company and C.W.A.

[fol. 417] We offer to meet with the union's bargaining committee beginning with the earliest mutually convenient date and continuing therefrom with such frequent sessions as to permit possible development of a mutually acceptable new agreement prior to July 14, 1956.

Very truly yours,

Ohio Consolidated Telephone Company,
(s) R. N. Cole,
Vice President.

RNC:m

cc: Mr. F. A. Thernes
Mr. Thomas Mitchell

bc: Mr. F. A. Lennberg
Mr. G. E. Brewer
Mr. C. A. Mitchell
Mr. Donald Rupp
Mr. Robert Arnett

GENERAL COUNSEL'S EXHIBIT No. 4-B

[LETTERHEAD OF COMMUNICATIONS WORKERS OF AMERICA]

May 14, 1956

Mr. R. N. Cole, Vice-President,
Ohio Consolidated Telephone Company,
Eighth Floor, Masonic Building,
Portsmouth, Ohio.

Dear Mr. Cole:

Notice is hereby given pursuant to Section 8(d) of the Labor Management Relations Act of 1947 (also known as the Taft-Hartley Act) that the Communications Workers of America does not desire that the current collective bargaining contract covering wages, hours and other conditions of employment be automatically renewed in accordance with its provisions and, therefore, terminates such contract effective July 14, 1956, as in said contract provided.

[fol. 418] The Communications Workers of America desires to enter into a new contract effective on the date aforesaid covering wages, hours and other conditions of employment with the following changes or modifications: Establishment of hospitalization, medical and surgical benefits; a substantial general wage increase, improved vacation treatment; reduction of workweek to not more than 35 hours with no corresponding reduction in pay;

elimination of geographical wage differentials within the bargaining unit; narrowing of the nationwide geographical wage differential; and such other changes or modifications which the Union may deem it necessary or advisable to specify during bargaining conferences and meetings.

The Union hereby offers to have its bargaining committee meet and confer with representatives of the Company at such time and place as is determined to be mutually agreeable between the parties. In this connection, contact should be made by appropriate Company representatives with Mr. Frank A. Thernes, 922 Hotel Sinton, Cincinnati 1, Ohio.

The bargaining committee for the Union will be composed of the following: Messrs. Frank A. Thernes, who will act as chairman of the committee, Robert B. Arnett, Carl A. Mitchell and Donald H. Rupp. This committee may be supplemented or modified from time to time, as deemed necessary or advisable by the Union. This letter cancels all previous notifications of bargaining committees heretofore authorized to act on behalf of the Communications Workers of America.

Attention is directed to the fact that Section 8(d)(3) of the Labor-Management Relations Act of 1947 requires that a notice be given the Federal Mediation and Conciliation Service and the appropriate state agency, if any, within 30 days of the date of this notice if no agreement has been reached by that time.

Very truly yours,

(s) J. A. Beirne,
President.

Liu 1670 afl-cio

[fol. 419]

GENERAL COUNSEL'S EXHIBIT No. 4-C

[LETTERHEAD OF COMMUNICATIONS WORKERS OF AMERICA]

July 20, 1956

Mr. R. N. Cole, Vice-President,
Ohio Consolidated Telephone Company,
Eighth Floor, Masonic Building,
Portsmouth, Ohio.

Dear Mr. Cole:

Under date of May 14, 1956, I sent you the proper notices required by the Labor-Management Relations Act of 1947 regarding the Union's position with respect to the contract which terminated July 14, 1956.

In that letter I gave you the composition of the Union's bargaining committee. This is to advise that I am supplementing that committee by the addition of Mr. J. Curtis Fletcher, National Director, Non-Bell. In addition to being a member of the committee, Mr. Fletcher will serve as co-chairman along with Mr. Frank A. Thernes.

Very truly yours,

(s) J. A. Beirne,
President.

Liu 1670 afl-cio

[fol. 536]

GENERAL COUNSEL'S EXHIBIT No. 31

STIPULATION—C.W.A. & OHIO CONSOLIDATED TELEPHONE COMPANY
(Page 7 of Transcript)

Ohio Consolidated Telephone Company Case 9-RM-143

The name of the Employer-Petitioner is the Ohio Consolidated Telephone Company. It is incorporated in the State of Ohio. It is a wholly-owned subsidiary of General Telephone Corporation. The Employer's principal office is located at Portsmouth, Ohio, and it operates in 24 counties throughout the State of Ohio, with 39 offices located therein. The Employer is engaged as a public utility in the telephone business, and during the past 12-month period received total revenues valued in an amount in excess of $3 million. During the same 12-month period, the Employer's direct purchases from points outside the State of Ohio to its operations in the State of Ohio, such as telephone poles, telephones, wire, cable, etc., are valued at in excess of $1 million.

[fol. 537]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DECREE—Filed May 14, 1959

On Petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is ordered that the words "in any manner" be stricken from paragraph 1 of the Board's order and that said order in all other respects be and it is hereby enforced.

[fol. 538]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 13,729

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND LOCAL NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, Respondents.

OPINION—May 14, 1959

Before Simons and Allen, Circuit Judges; Choate, District Judge.

Per Curiam. This cause came on to be heard upon petition of the National Labor Relations Board, pursuant to Section 10 (e) of the National Labor Relations Act as Amended, 29 U. S. C. § 151 et seq. for enforcement of its order against respondents dated May 1, 1958.

An examination of the record in this case, and the consideration of the briefs and the oral argument convinces us that there is substantial evidence to support the Board's finding that the respondents violated Section 8 (b) (1) (A) of the National Labor Relations Act, 29 U. S. C. § 158, and that the Board's procedure was valid and proper.

Respondents complain that paragraph 1 of the Board's order directing respondents to "Cease and desist from in any manner restraining or coercing employees of Ohio Consolidated Telephone Company or any other employer [fol. 539] in the exercise of the rights guaranteed in Section 7 of the Act" is too broad. We agree only as respects the use of the words "in any manner" which are, in our opinion, vague and subject to misinterpretation, and there-

fore we order that these words be stricken from said paragraph 1.

We direct that a decree should issue enforcing the Board's order against the respondents, after the aforementioned words "in any manner" are stricken from paragraph 1 thereof.

Accordingly, a decree in the usual form may be submitted.

[fol. 540]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Number 13729

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL No. 4372, Respondents.

RESPONDENTS' MOTION FOR RECONSIDERATION AND REHEARING —Filed June 2, 1959

The Words "or Any Other Employer" in the Board's Order as Enforced by the Court, Without Any Geographic Limitation and Without Any Expression in the Court's Decree Delimiting the Effect of its Injunction, Constitute This Court a Court of First Instance for the Trial of Unfair Labor Practices.

The proposition above stated was fully argued in the Respondents' Brief and in oral argument; however, the sweeping effect of the broad and general language of the Board's order, as enforced by the Court, which we believe

to be contrary to controlling precedent, compel the Re-
[fol. 541] spondents to ask that the Court reconsider its decision and modify its Decree upon the considerations hereinafter enumerated.

1. There was no evidence in the record in this case that any employees, other than those working for Ohio Consolidated, were, or could have been, restrained or coerced in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended. The fact that employees of other employers, not involved in the labor dispute, may have heard of improper conduct engaged in by members of Local 4372, would be immaterial unless it was shown that they were asked to perform work for Ohio Consolidated during the strike. Absent these circumstances, which do not appear in the record, the Section 7 rights of such employees were not involved in the strike.

The contention in the Board's brief, that employees of other employers may have heard of such conduct, seeks to make a mere police statute of the Act and a police court of this Court. Congress, in enacting the Labor Act, left to the states the police function of controlling violence. See *San Diego Building Trades* v. *Garmon,* U. S. Sup. Ct., #66, decided April 20, 1959, 43 LRRM 2838, and cases therein discussed. The Act seeks to protect the rights of employees against restraint and coercion, saying:

> "It shall be unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7." 29 USC., §158 (b) (1).

It makes no proscription against violence, *eo nomine,* but only against "restraint and coercion."

Without evidence that employees, other than those of Ohio Consolidated, were restrained and coerced in their rights, an order as to such employees of other employers can only be designed to control violence, or threats thereof, *in vacuo,* which is a police function remaining to the states.

[fol. 542] 2. There was no evidence or finding *in this record* that violence and threats thereof were, or are, an

habitual course of conduct or normal pattern of conduct of the Communications Workers of America. The Board did not so find and there is no factual basis in the record for such a finding.

As an afterthought, in an effort to supply this deficiency, counsel for the Board injected into their brief the *compromise* settlements in two isolated CWA Labor Board cases, although there is no indication that the Board considered these cases in formulating its order.

As was pointed out in our original brief at pages 17 through 22, no conclusion that CWA is in "general opposition to the purposes of the Act" can be based upon compromise settlements in these two cases, when the Board failed to so find and when the Board's General Counsel expressly found to the contrary in one of the two cases itself. *In re Southern Bell Tel. & Tel. Co., G. C. Administrative Decision,* #F-739, Nov. 27, 1958, 43 LRRM 1237, Resp. Brief, pp. 20-21.

Especially is this true when there is no evidence, explanatory of the settlements, in the record. A bare compromise agreement, without more, forms no basis for a factual conclusion that CWA is in general opposition to the policy of the Act.

3. CWA is a national association having approximately 260,000 individual members in 730 affiliated local unions from coast-to-coast, throughout the United States. It has contractual relationships with almost 100 employers and is constantly engaged in organizational efforts among the employees of still other employers.

Its responsibility for unfair labor practices in this case is derivative. The record reveals that only one out of three local unions in the Ohio Consolidated strike engaged [fol. 543] in improper conduct, and CWA's responsibility is based entirely upon the fact that it continued to pay strike benefits to the members of this Local, and did not remove their leadership from office, during the strike. The same is true of the Indiana Bell and Southern Bell cases, as appears from the Administrative decision of the Board's General Counsel, above cited.

The Board's order, as enforced by the Court's Decree, presumably covers the employees of every one of the em-

ployers with whom CWA deals, as well as all other employers in the United States, no matter where located.

Does this mean that if a CWA local union in Seattle, Washington, engages in mass picketing a charge of contempt can be filed by the Board against CWA in this Court, and that this Court, as a court of first instance for the trial of unfair labor practices, will adjudicate all of the issues of fact and determine whether the unfair labor practice occurred, whether it was merely an isolated instance or not, and whether CWA itself was responsible therefor on vicarious principles?

Presumably it does, since the effect of the Court's injunction was not restricted by its terms to the area in which the agent of CWA in this case—Local 4372—operates, and since there is no other language in the Court's decision indicating an intent of the Court to limit its scope and extent.

Does it also mean that if a CWA local union procures the discriminatory discharge of an employee in Florida, or Texas, or California, or Massachusetts, that an unfair labor practice charge against CWA may be litigated in this Court?

Presumably so, since such would restrain and coerce the employee in his Section 7 rights and since there is no limitation of the breadth of the Court's decree which would exclude this construction of its intendment.

[fol. 544] 4. The operations of Respondent Local 4372 are confined to a part of the State of Ohio. An injunction, the scope of which extends beyond the geographical area of its operations, can be construed to render Local 4372 responsible for the acts of other CWA local unions under some circumstances. The Decree of the Court, which applies to the restraint and coercion of the employees of Ohio Consolidated "or any other employer," regardless of location, invite the trial in this Court of allegations of initial labor act violations. Thus the Court, unless the effect of its Decree is delimited by appropriate language, may well be asked to adjudicate complicated factual questions of agency involving the alleged responsibility of Local 4372 for the acts of other CWA local unions in widely divergent geographical areas.

5. The definitive precedents of the Supreme Court state that future violations of the Act can be enjoined by Board order only if they bear a reasonable resemblance to those shown by evidence to have been committed in the past. They also say that the circuit courts should not by contempt proceedings, try initial violations of the Act which are not fairly related to those found by the Board and Court. *NLRB* v. *Express Publishing Co.*, 312 U. S. 426, 443, 435, 437; *May Department Stores* v. *NLRB*, 326 U. S. 376, 390, 393.

> "But we believe it more appropriate to follow the reasoning of the Supreme Court in *Express Publishing*, that a court of appeals should not become a labor court of first instance by virtue of its contempt powers. We therefore agree with the Sixth Circuit that the better view is 'that the order should not go beyond the evidence supporting the unfair labor practices alleged.'" *Int. Bro. of Teamsters, etc., of Amer., Local 554* v. *NLRB*, —— F. 2d ——, 43 LRRM 2197 (CA-DC, #13713, decided Dec. 4, 1958), quoting *NLRB* v. *Cleveland Cliffs Iron Co.*, 133 F. 2d 295, 302 (CA-6, 1943).

[fol. 545] 6. All Board orders, except one, cited in the Board's brief in support of the language "or any other employer"[1] restrict the geographical area, in which the order is to be effective, to the area in which the primary actor (which here would be Local 4372) operates and in all of them (except *O. W. Burke Company*, where such was clearly implied from the facts recited) the Board made a

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[1] *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company)*, 116 NLRB 842, 846; *United Mine Workers of America, District 2 (Mercury Mining and Construction Corporation)*, 96 NLRB 1389, 1392, enforced, 202 F. 2d 177 (C.A.6); *United Mine Workers of America, District 31 (L. E. Cleghorn)*, 95 NLRB 546, 550, enforced, 198 F. 2d 389 (C.A.4), certiorari denied, 344 U.S. 884; *United Mine Workers of America (West Kentucky Coal Co.)*, 93 NLRB 916, 919, enforced, 195 F. 2d 961 (C.A.6), Certiorari denied, 314 U.S. 920; Local 983, *United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company)*, 115 NLRB 1123, 1125.

specific finding that the Respondent *intended* to extend its coercive conduct to employees of other employers in *that* geographic area.

The one exception is the case of *Local 140, United Furniture Workers of America, CIO (Brooklyn Spring Corporation)* 113 NLRB 815, 816, enforced 233 F. 2d 539 (CA-2). It appears from the Second Circuit decision that the language "or any other employer" was not challenged on appeal. Furthermore, the *only* respondent in that case was a local union. Hence that case is not authority for the use of such language against a parent union whose operations are nationwide in scope and which may be derivatively responsible for the acts of hundreds of local unions.

In *Bitner Fuel Co.*, 92 NLRB 953, 955, enforced 190 F. 2d 251 (C.A.-4), the Board itself specifically held that such broad orders would be issued only where "the record clearly indicated that the respondent * * * was engaged in a planned program to apply the same technique to all" other employers "within its jurisdiction."

[fol. 546] CONCLUSION

We, therefore, urge that the Court reconsider its decision and modify its Decree in the following particulars:

(a) By inserting in the Board's order, in lieu of the words "in any other manner" which have already been stricken, the words "by violence or threats thereof," so that the decree cannot be construed to enjoin restraint and coercion by any means other than that shown in evidence and found by the Board; and

(b) By striking from the Board's order, the words "or any other employer," or, in the alternative, by inserting following such words the words "within the geographical jurisdiction of Local 4372," so that the Decree cannot be construed to cover unrelated cases in other geographical areas.

The Board's order would thus direct respondents to:

> "Cease and desist from, by violence or threats thereof, restraining or coercing employees of Ohio Consolidated Telephone Company, or any other employer

within the geographical jurisdiction of Local 4372, in the exercise of rights guaranteed in Section 7 of the Act;"

Or, preferably,

"Cease and desist from, by violence or threats thereof, restraining or coercing employees of Ohio Consolidated Telephone Company in the exercise of rights guaranteed in Section 7 of the Act."

The same result would be accomplished, without again changing the language of the Board's order, by the issuance of a definitive decision on rehearing, substantially as follows:

"The Court does not construe its Decree to extend to restraint and coercion of employees other than by [fol. 547] violence or threats thereof, or to employees of employers other than those within the geographical area covered by the operations of respondent Local 4372."

Respectfully submitted

Kane and Koons, Charles V. Koons, 1331 G Street, N. W., Washington 5, D. C., Adair and Goldthwaite, J. R. Goldthwaite, Jr., 1431 Chandler Building, Atlanta 3, Georgia, Attorneys for Respondents.

CERTIFICATE OF COUNSEL

This will certify that the foregoing motion for reconsideration and rehearing is not filed for the purpose of delay, but is filed in good faith because we, as counsel for respondents, believe that substantial error has been committed in the Court's decree and that the Court's decision is not in accord with principles contained in controlling precedents of the Supreme Court.

J. R. Goldthwaite, Jr.

[fol. 548]

IN THE UNITED STATES COURT OF APPEALS

ORDER DENYING REHEARING—June 26, 1959

This cause having come on before the Court upon Respondents' Motion for Reconsideration and Rehearing, and the Court having examined said Motion and Memorandum, and being of the opinion that no new matter has been presented,

Said Motion for Reconsideration and Rehearing be and it is hereby denied.

[fol. 549] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 550]

SUPREME COURT OF THE UNITED STATES

No. 418—October Term, 1959.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD

ORDER ALLOWING CERTIORARI—November 16, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILED
SEP 22 1959
JAMES R. BROWNING, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INDEX

	Page
OPINIONS BELOW	1-2
JURISDICTION	2
QUESTIONS PRESENTED	2-3
STATUTES INVOLVED	3
STATEMENT	3-10
REASONS FOR GRANTING THE WRIT	11-26
I. The Decree of the Court of Appeals is Inconsistent With Controlling Precedent Established in Decisions of This Court and Heretofore Uniformly Followed By the Courts of Appeal	11-15
II. The Question of Whether Orders of the Board Based Upon Compromise Settlements of Unfair Labor Practice Charges Can Be Given Prejudicial Effect in Other Cases Is a Matter Of Grave Importance to All Parties Dealing With the Board, Employer and Union Alike	15-17
III. The Decision of the Sixth Circuit in This Case is in Direct Conflict With a Concurrent Decision of the Fifth Circuit	17-20
IV. The Words "Or Any Other Employer" In the Board's Order as Enforced By the Court, Without Any Geographic Limitation and Without Any Expression in the Court's Decree Delimiting the Effect of its Injunction, Constitute the Court of Appeals a Court of First Instance For the Trial of Unfair Labor Practices	21-26
CONCLUSION	27

APPENDICES (IN A SEPARATE VOLUME)

APPENDIX A—Pertinent Statutes	1a
APPENDIX B—Excerpt from Brief of Counsel for Labor Board in Court Below	6a
APPENDIX C—Excerpt from Respondents' (Petitioners here) Brief in Court Below	10a

Page

APPENDIX D—Full Text of Unreported Settlement Stipulation and Board Order in Indiana Bell Telephone Company Case . 12a

APPENDIX E—Full Text of Unreported Settlement Stipulation and Board Order in Southern Bell Telephone Company Case . . 23a

APPENDIX F—Opinion and Order Denying Rehearing in the Court Below 40a

APPENDIX G—Decision and Order of NLRB . . 41a

TABLE OF AUTHORITIES CITED

Court Cases

Cone Brothers Contracting Company v. National Labor Relations Board, 235 F. 2d 37 (CA-5, 1956) . . . 14

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers, Local 554, AFL-CIO v. National Labor Relations Board, 262 F. 2d 456 (CA-DC, Dec. 4, 1958) 13, 20, 22

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Truck Drivers Local Union 728 v. National Labor Relations Board, 265 F. 2d 439 (CA-5, April 8, 1959) 20

May Department Stores Company v. National Labor Relations Board, 326 U.S. 376, 66 S. Ct. 203 . . . 12

Morrison-Knudsen, Inc. v. NLRB, ____F. 2d____, 44 LRRM 2680) CA-9, #16301, Aug. 10, 1959) . . . 22

National Labor Relations Board v. Armco Drainage and Metal Products, 220 F. 2d 573 (CA-6, 1955) . . . 13

National Labor Relations Board v. Cleveland-Cliffs Iron Company, 133 F. 2d 295 (CA-6, 1943) 13, 20

National Labor Relations Board v. Dallas General Drivers, etc., Local 745, 228 F. 2d 702 (CA-5, 1956) . 20

Court Cases (continued)

	Page
National Labor Relations Board v. Express Publishing Company, 312 U.S. 426, 61 S. Ct. 693	11, 20
National Labor Relations Board v. Ford Motor Company, 119 F. 2d 326 (CA-5, 1941)	20
National Labor Relations Board v. Indiana and Michigan Electric Company, 318 U. S. 9, 63 S. Ct. 394 .	7
National Labor Relations Board v. Local 369, International Hodcarriers, Building and Common Laborers Union of America, 240 F. 2d 539 (CA-3, 1957) . . .	13
National Labor Relations Board v. Local 926, International Union of Operating Engineers, AFL-CIO, 267 F. 2d 418 (CA-5, May 26, 1959)	17
National Labor Relations Board v. Nashua Manufacturing Corporation, 218 F. 2d 886 (CA-5, 1955) . . .	14
News Printing Company v. National Labor Relations Board, 231 F. 2d 767 (CA-DC, 1956)	13
St. Louis Mining and Manufacturing Company v. Montana Mining Company, 171 U. S. 650, 19 S. Ct. 61 .	15
San Diego Building Council v. Garmon, 359 U.S. 236, _____S. Ct._____	23
Williams v. First National Bank, 216 U.S. 582, 30 S. Ct. 441	15

National Labor Relations Board Cases

Bitner Fuel Co., 92 NLRB 952, enf'd 190 F. 2d 251 (CA-4)	15
Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company) 115 NLRB 1123	14
Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company) 116 NLRB 842	14

National Labor Relations Board Cases (continued)

	Page
Local 140, United Furniture Workers of America, CIO, (Brooklyn Spring Corporation) 113 NLRB 815, enf'd 233 F. 2d 539 (CA-2)	14
United Mine Workers of America, District 31 (L. E. Cleghorn) 95 NLRB 546, enf'd 198 F. 2d 389 (CA-4) Cert. Den. 344 U.S. 884	14
United Mine Workers of America, District 2(Mercury Mining and Construction Corporation) 96 NLRB 1389, enf'd 202 F. 2d 177 (CA-6)	14
United Mine Workers of America (West Kentucky Coal Company) 93 NLRB 916, enf'd 195 F. 2d 961 (CA-6) Cert. Den. 314 U.S. 920	14

Statutes

28 USC, Sec. 1254 (1)	
National Labor Relations Act, as amended (61 Stat. 136, 29 USC, Supp. V, Sec. 151, et seq):	3
Sec. 2 (3)	3
Sec. 7	6, 7, 8, 13, 21
Sec. 8 (b) (1) (A)	6, 22
Sec. 10 (c)	11, 19
Sec. 10 (e)	11

Miscellaneous

Administrative Rulings of National Labor Relations Board General Counsel, Case #S-739, November 27, 1958, 43 LRRM 1237	24
In re Communications Workers of America (Indiana Bell Telephone and Telegraph Company) (Separate Appendix D)	12a
In re Communications Workers of America (Southern Bell Telephone and Telegraph Company) (Separate Appendix E)	23a
Twenty-Third Annual Report of the National Labor Relations Board, 1958, p. 4	16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No._____

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Communications Workers of America, AFL-CIO, and Local Union No. 4372, Communications Workers of America, AFL-CIO, pray that a writ of certiorari issue to review the decision and decree of the United States Court of Appeals for the Sixth Circuit, entered May 14, 1959, as to which Motion for Reconsideration and Rehearing was denied by that Court by Order entered June 26, 1959. The Decree enforced an order of the National Labor Relations Board with modification.

OPINIONS BELOW

The opinion of the court below (R. 16) is reported at 266 F. 2d 823. The Order denying the Motion for Reconsideration and Rehearing (R. 18) is reported at .....F. 8d..... The decision and order of the

Board (B.A. 78a) is not yet reported but will be reported as 120 NLRB No. 96.[1]

JURISDICTION

The opinion and decree of the Court of Appeals were entered on May 14, 1959. Petitioners' Motion for Reconsideration and Rehearing (R. 17) requesting further modification of the Board's order, or, in the alternative, clarification of the effect of the Court's decree, was denied on June 26, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Is not a Labor Board Order too broad, which enjoins Respondents from restraining or coercing employees of the primary employer "or any other employer," when there is no pleading, allegation, evidence, or finding in the record that employees of any employer, other than the primary employer, were or could have been restrained by the conduct of the strikers?

2. Was it not error for the Court of Appeals to enforce a Labor Board Order which enjoins a parent national union and one of its 730 Local unions from restraining and coercing employees of a primary employer or "any other employer" where there was no pleading, allegation, evidence or finding in the record to support extending the scope of the order to employees of "any other employer"; and where the alleged justification of the scope of the order consisted only of compromise settlements, containing no admis-

[1]Reference to the printed "Appendix to Petitioner's Brief," which constituted the appendix record below and which contains the Board's decision and order and the Trial Examiner's Intermediate Report, is designated "B.A." The certified transcript of proceedings in the Court of Appeals is designated "R".

sion of guilt, in two other isolated cases; and where such compromise settlements were injected into the case for the first time in the brief of the Board's General Counsel filed with the Court of Appeals to support its petition for enforcement?

3. Is not a Labor Board Order, enforced by the Court of Appeals, which enjoins a national labor union, operating from coast-to-coast with collective bargaining agreements with some 100 different employers, and one of its 730 Locals from restraining or coercing employees of a primary employer "or any other employer" so broad in scope as to make the Court of Appeals, in possible future contempt proceedings, a court of first instance for the trial of other unrelated unfair labor practices in geographical areas outside of its jurisdiction?

4. Was it not error for the Court of Appeals to refuse to strike the words "or any other employer" from Paragraph 1 of the Labor Board Order, or, in the alternative, to issue a definitive construction of its decree, delimiting the breadth of effect which the Court intended its decree to have in the future?

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Sec. 151, et seq.) are set forth in Appendix A in separate volume, Petitioners' Appendices.

STATEMENT

The petitioner, Communications Workers of America, is a national labor organization, affiliated with the AFL-CIO, having approximately 260,000 members and 730 local unions throughout the United States and Canada. It is the collective bargaining representative

of the employees of approximately 100 employers from coast-to-coast, and has one or more collective bargaining agreements in effect with each. In addition, it conducts constant organizational campaigns among the employees of other employers. These contracts and organizational campaigns are administered through nine (9) geographical administrative districts, four (4) nationwide administrative directors, and the local unions. (The Constitution of CWA, Articles IV; V; IX, Section 2; XI; XIII; and Appendix A (fly leaf map) to such Constitution is in the Board's record as GCX 3; introduced in evidence, B.A. 85a).

The employees of Ohio Consolidated Telephone Company hold their membership in, and are represented in collective bargaining matters by, three CWA local unions — Local 4372, Local 4373, and Local 4374. The petitioner, Local 4372, has as its geographical area of jurisdiction, and has as its members, those non-supervisory employees of Ohio Consolidated Telephone Company working in the Portsmouth, Ohio, and contiguous operations of Ohio Consolidated.

Although the members of all three of the above named local unions went on strike at Ohio Consolidated on July 14, 1956 (I.R.; B.A. 3a), and their representatives participated in contract negotiations with Ohio Consolidated (B.A. 86a), only Local 4372 was a Respondent before the Labor Board. No charges were filed against the other two CWA local unions and there was no evidence that members of these two local unions participated in any of the untoward conduct alleged in the Board's complaint or shown in evidence.

Ohio Consolidated Telephone Company is one of the subsidiary operating companies of the General Telephone Company, which operates a nationwide tele-

phone system similar to that of the American Telephone and Telegraph Company. General Telephone Company of Ohio is a sister subsidiary company to Ohio Consolidated. (B.A. 143a).

General Telephone of Ohio and Ohio Consolidated have some top managerial officials in common,[2], and throughout the strike supervisory employees of General Telephone of Ohio and other subsidiary companies of the General System were loaned to, and performed work for, Ohio Consolidated during the strike.[3]

These supervisory employees of General performed work for Ohio Consolidated normally done by the employees on strike. The only other employees who worked during the strike were Ohio Consolidated's supervisory force, several confidential secretaries to management officials who were not eligible for union membership, and one female employee who abandoned the strike and returned to work without interference or molestation from her fellow workers. They also performed some work normally done by strikers. None of these employees was deterred from continuing work by conduct of strikers. (B A. 114a, 115a, 142a; I.R., B.A. 53a-58a).

The Trial Examiner considered 27 specific incidents of misconduct alleged in the Board's complaint to have been committed by striking members of Local 4372 during the strike which lasted in excess of six months. The Board approved all of the Trial Examiner's find-

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[2]For instance, Mr. Dick Zachman who is Public Relations Director for both of the sister companies. (I.R.; B.A. 10a).

[3]The Intermediate Report names the following supervisory employees of General Telephone of Ohio who worked for Ohio Consolidated during the strike: District Plant Supt. Casteel; Plant Engineer Stratton; Chief Operator Pat Bauer; Construction Supervisors Ghearing, Foster and Seward; and Supervisor Wemple. In addition, other supervisors of the General System were working. (I.R., B.A. 29a, 44a.)

ings of fact, but reversed his conclusion that no unfair labor practices had been committed. The Board concluded that ten instances of misconduct by striking employees directed against supervisors, one instance of misconduct directed against the confidential secretary to the Vice President of Ohio Consolidated, and portions of three instances of misconduct directed against supervisors, which were enmeshed with coercive misconduct on the part of the supervisors themselves, were violative of Section 8 (b) (1) (A) of the Act, because such acts "tended" to restrain and coerce employees.[4] (Board's Decision, B.A. 78a-80a).

Thus, the improper conduct found by the Board was limited to violence and threats of violence by strikers; and the only employees who were, or could have been, restrained or coerced in their Section 7 rights—that is, their right to work for Ohio Consolidated during the strike — were those employees who were working or may have desired to work. Neither employees of

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[4]Other conclusions of the Trial Examiner and rulings of the Board were as follows:

(1) He found that Company supervisors provoked all of the misconduct in seven instances and provoked part of the misconduct in three other instances; that the Company condoned and ratified the first act of threatened violence during the strike, which act was committed *against strikers* by employees of independent contractors (no violence by strikers against employees of independent contractors was shown in evidence); and that the District Plant Superintendent of General Telepone of Ohio, who was working for Ohio Consolidated, committed the first act of actual violence during the strike when he pushed a striker down an alley with an Ohio Consolidated truck, resulting in a "compressed vertebra" and other injuries to the striker. These findings were approved by the Board. (B.A. 7a, 8a, 19a, 20a, 78a).

(2) The Trial Examiner further found that President Williams and General Counsel Griffith of Ohio Consolidated employed private investigators to come to Portsmouth; that Public Relations Director Zachman (for both Ohio Consolidated and General Telephone of Ohio), Industrial Relations Director Lennberg, and either General Plant Manager Pratt or Division Manager Kimball *instructed* the investigators *"to remove four of the strike leaders from further strike activity in any manner they saw fit — by running them down with an automobile if necessary,"* that photographs of the four strikers were displayed to the investigators; that the investigators were discharged, in part, because they had not gotten the four strike leaders out of the picture; and that on the occasion of the

other employers, nor the right to work for other employers, could have been affected.

Local 4372 was held responsible for these acts because its officers and members participated in them. The Communications Workers of America were held responsible only derivatively because it approved and financially supported the strike of Local 4372 (B.A. 6a, 54a). There was no evidence that CWA or any of its officers instigated or approved any improper acts other than by the continuance of financial support to the strike and by the failure publicly to repudiate the strikers engaging in such conduct.

Upon these findings and conclusions, the Board's Order provided in Paragraph 1 that both CWA and Local 4372 "and their respective officers, representatives, agents and assigns:

> "1. Cease and desist from *in any manner* restraining or coercing employees of Ohio Consolidated Telephone Company *or any other employer* in the exercise of the rights guaranteed in Section 7 of the Act." (Emphasis supplied).

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discharge Division Manager Kimball stated to the investigators that, had they gotten the four strike leaders out of the picture, "the negotiations and the strike and everything would be disintegrated entirely." These findings of fact were tacitly approved by the Boa[illegible]. (Emphasis supplied). (B.A. 9a-12a, 80a-81a).

(3) Relying upon the decision of this Court in *NLRB v. Indiana & Michigan Electric Co.*, 318 U.S. 9, 18, 19, the Trial Examiner concluded that the foregoing facts were relevant and should be considered as to whether Ohio Consolidated had established a policy pattern of violence (B.A. 7a) and had conspired to engage in illegal conduct which constituted an abuse of the Board's processes. (B.A. 13a). Upon the consideration of such facts, the Trial Examiner concluded that Ohio Consolidated had displayed contempt for the rights of its own employees and had abused the processes of the Board by threatening its employees with physical violence, by hiring investigators to engage in violence, and by engaging in actual violence against striking employees. (B.A. 59a).

While the Board apparently agreed with the conclusion that Ohio Consolidated restrained and coerced its employees by this conduct, it held that such evidence and findings were irrelevant and refused to consider them (Board's Decision, p. 4, Par. #3, B.A. 81a).

There was no pleading, allegation, evidence or finding in the record that employees of "any other employer" than Ohio Consolidated were, or could have been restrained or coerced in their Section 7 rights; nor was there any pleading, allegation, evidence or finding that such restraint or coercion had been accomplished "in any manner" other than by acts and threats of violence on the part of striking members of Local 4372.

To avoid the expense of litigation, Petitioners (Respondents below) proposed to the Board that they would agree to a consent decree of enforcement if the words "in any manner" and "or any other employer" were stricken so that the Order would be restricted to the evidence and findings in the case. This proposal was declined and Petitioners resisted enforcement unless such modifications were made by the Court of Appeals.

In an effort to supply the deficiencies in the record, Counsel for the Labor Board, in their brief, alluded to two previous *unreported* orders of the Board, based upon compromise settlement agreements made between CWA and others of its affiliated local unions, the Labor Board, and Indiana Bell Telephone Company in one case and Southern Bell Telephone Company in the other.

Local 4372 was not a party to either of the previous cases. These unreported orders of the Board were not in evidence and the Board made no reference to them in its decision or order; but it was contended that the Board *could* have relied upon such previous determinations and *could* have concluded that both Respondents

below were in "general opposition to the purposes of the Act."[5]

Counsel for the Board in alluding to these previous unreported orders did not report to the Court that they were based upon *compromise* settlement stipulations, containing no admissions of prejudicial facts, and that, consequently, the orders of the Board, based upon the compromise settlements, contained no findings of fact that CWA or any other party to the compromises had violated the Act.[6].

As a result, Petitioners were forced at much expense to print as Appendices to their brief in the Court of Appeals the entire compromise settlement stipulations and orders of the Board in both the Indiana Bell and Southern Bell cases, in order to demonstrate to the Court of Appeals that no prejudicial conclusions could be based upon these matters, not of record, because they were, themselves, based upon privileged agreements and because they, themselves, made no prejudicial findings of fact that the Act had been violated. (Portions of Petitioners' Brief in the Court of Appeals, substantiating the foregoing, are reprinted as Petitioners' Appendix C in a separate volume. The Indiana Bell and Southern Bell Compromise Settlements and Board Orders are also reprinted in full as Appendices D and E in the separate volume.)

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[5]The portions of the General Counsel's brief, filed on behalf of the Board, which inject the compromise settlements into the case *for the first time* and contain argument based thereon, are reprinted as Petitioners' Appendix B in a separate book.

[6]Paragraph 8 of both the Indiana Bell and Southern Bell Compromise Settlement Stipulations contains the following express provision:

> "it is understood that the signing of this stipulation by Respondents does not constitute an admission by them that they have violated the Act."

Accordingly, the Board made no finding of fact that the Respondents had violated the Act in either of the cases.

Such was to no avail, however, for the Court of Appeals, after modifying Paragraph 1 of the Board's Order by striking the words "in any manner," enforced the words "or any other employer."

As aforesaid, there was no pleading, allegation, evidence or finding *in the record* upon which enforcement of the language "or any other employer" could be based. Therefore, while the summary opinion of the Court of Appeals does not indicate what substantive considerations the Court entertained,[7] it must necessarily have based this portion of its opinion and decree upon prejudicial conclusions drawn from these privileged, compromise settlements, which were not of record in the case, and upon the orders of the Board based upon them, which, however, made no findings of fact that either of Petitioners had previously been responsible for violations of the Act.

By Motion for Reconsideration and Rehearing (R. 17) Petitioners again requested the Court of Appeals to delete the language "or any other employer" from the Board's Order, as enforced; or, in the alternative, that the Court issue a definitive ruling that its Decree would not be construed in the future to apply to employees of employers other than those within the geographical area covered by the operations of Local 4372.

The Motion was denied on June 26, 1959, without clarification of the effect and scope which would be placed upon the Decree in possible future contempt proceedings (R. 18).

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[7]The opinion does indicate, however, that the Court considered the briefs of the parties which contained this material, even though it was not in the record.

REASONS FOR GRANTING THE WRIT

I.

THE DECREE OF THE COURT OF APPEALS IS INCONSISTENT WITH CONTROLLING PRECEDENT ESTABLISHED IN DECISIONS OF THIS COURT AND HERETOFORE UNIFORMLY FOLLOWED BY THE COURTS OF APPEAL.

This Court has, heretofore, in several decisions had occasion to consider and define the permissible breadth and scope of cease and desist orders of the Labor Board, and enforcement decrees of the Courts of Appeal, issued pursuant to Sections 10 (c) and 10 (e) of the National Labor Relations Act.[8]

The basic construction which has been adhered to in all subsequent decisions, is found in *NLRB v. Express Publishing Co.*, 312 U. S. 426; 434, 435, 61 S. Ct. 693, 8 LRRM 415, where the Court said:

> "Congress has itself afforded a guide pointing to the appropriate limits of the order which the Board is to make in restraining unfair labor practices. By its definition and classification of unfair labor practices in the statute it is shown that they are not always so similar or related that the commission of one necessarily admits of an order restraining all.
>
> * * *
>
> "In view of the authority given to the Board by 10 (c) carefully restricted to the restraint of such unfair labor practices as the Board has found the employer to have committed, and of the broad language of 10 (e) authorizing the courts to modify the order of the Board wholly or in part, we can hardly suppose that Congress intended that the Board should make or the court should enforce orders which could not appropriately be made in

[8]Sections 10 (c) and 10 (e) are reprinted in Appendix A. See separate volume, Petitioner's Appendices.

judiciai proceedings. * * * *In the light of these provisions we think that Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found.*" (Emphasis supplied).

In *May Department Stores Co. v. NLRB*, 326 U. S. 376, 390, 393, 66 S. Ct. 203, 17 LRRM 643, the Court quoted its *Express Publishing Company* ruling as follows:

> " 'To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past.' P. 437."

In that case the Court stated further:

> "While contempt proceedings can be instituted only by the Board and in the public interest, the possibility of contempt penalties by the court for future Labor Act violations adds sufficient additional sanction to make material the difference between enjoined and non-enjoined employer activities."

In both of these decisions the Court set aside the portion of the Board's order not supported in the evidence. In them, as in the present case, there was no evidence or finding in the record of past course of conduct which authorized an extension of the injunction against future violations beyond the parties involved in the controversy shown in evidence.

The Amendments to the Act, subsequent to these decisions, made no changes which alter them as precedents and they have heretofore been uniformly followed

by all of the Courts of Appeals, including the Sixth Circuit.

In *NLRB v. Local 369, International Hodcarriers, Builders and Common Laborers Union of America*, 240 F. 2d 539, 39 LRRM 2377 (CA-3, 1957), the Third Circuit quoted the *Express Publishing Company* case, as follows:

> " 'So far as respondents' past conduct may be thought to have had any effect on the rights guaranteed by Section 7, such consequences would be effectively prevented by the prohibition of such an order without drawing it so broadly as to forbid all other unrelated unfair labor practices.' " (312 U. S., at p. 438).

In the recent case of *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers, Local 554, AFL-CIO v. National Labor Relations Board*, 262 F. 2d 456, 43 LRRM 2197 (CA-DC., Dec. 4, 1958) the Court stated:

> "But we believe it more appropriate to follow the reasoning of the Supreme Court in *Express Publishing*, that a court of appeals should not become a labor court of first instance by virtue of contempt powers. We therefore agree with the Sixth Circuit that the better view is 'that the order should not go beyond the evidence supporting the unfair labor practices alleged.' " (Quoting *NLRB v. Cleveland-Cliffs Iron Co.*, 133 F. 2d 295, 302, 12 LRRM 550 (CA-6, 1943).

See also:

NLRB v. Armco Drainage and Metal Products, 220 F. 2d 573, 35 LRRM 2536 (CA-6, 1955);

News Printing Co. v. NLRB, 231 F. 2d 767, 37 LRRM 2656 (CA-D.C., 1956);

Cone Brothers Contracting Co. v. NLRB, 235 F. 2d 37, 38 LRRM 2318 (CA-5, 1956);

NLRB v. Nashua Mfg. Corp., 218 F. 2d 886, 35 LRRM 2371 (CA-5, 1955).

The Board also, until quite recently, considered itself bound by these precedents of this Court, and all Board orders, except one, which have been cited by its counsel[9] in support of the language "or any other employer" have restricted the geographical area in which the order was to be effective, to the area in which the primary actor (which here would be Local 4372) operates and in all of them (except *O. W. Burke Company*, where such was clearly implied from the facts recited) the Board made a *specific* finding that the Respondent intended to extend its coercive conduct to employees of other employers in *that* geographic area.

The one exception is the case of *Local 140, United Furniture Workers of America, CIO (Brooklyn Spring Corporation)* 113 NLRB 815, 816, enforced 233 F. 2d 539 (CA-2). It appears from the Second Circuit decision that the language "or any other employer" was not challenged on appeal. Furthermore, the *only* respondent in that case was a local union. Hence that case is not authority for the use of such language against a parent union whose operations are nationwide in scope and which may be derivatively responsible for the acts of hundreds of local unions.

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[9]*Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company)*, 116 NLRB 842, 846; *United Mine Workers of America, District 2, (Mercury Mining and Construction Corporation,)* 96 NLRB 1389, 1392, enforced 202 F. 2d 177 (C.A. 6); *United Mine Workers of America, District 31 (L. E. Cleghorn)*, 95 NLRB 546, enforced 198 F. 2d 389 (C.A. 4), certiorari denied 344 U.S. 884; *United Mine Workers of America (West Kentucky Coal Co.)*, 93 NLRB 916, 919, enforced, 195 F. 2d 961 (C.A. 6), certiorari denied 314 U.S. 920; *Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company)*, 115 NLRB 1123, 1125).

In *Bitner Fuel Co.*, 92 NLRB 953, 955, enforced 190 F. 2d 251 (C.A.-4), the Board itself specifically held that such broad orders would be issued only where "the record clearly indicated that the respondent * * * was engaged in a planned program to apply the same technique to all" other employers "within its jurisdiction."

In this case, unless the unreported orders of the Board in the Indiana Bell and Southern Bell cases (which were not put in evidence and to which the Board made no reference in its decision and order), are to be considered, there is no justification for a departure from the established precedents of this Court and the language "or any other employer" should be stricken from the Board's order enforced by the Court of Appeals.

II.

THE QUESTION OF WHETHER ORDERS OF THE BOARD BASED UPON COMPROMISE SETTLEMENTS OF UNFAIR LABOR PRACTICE CHARGES CAN BE GIVEN PREJUDICIAL EFFECT IN OTHER CASES IS A MATTER OF GRAVE IMPORTANCE TO ALL PARTIES DEALING WITH THE BOARD, EMPLOYER AND UNION ALIKE.

One of the most basic and traditional principles of public policy inherent in our judicial system is that compromise settlements of litigation are to be encouraged, and, hence, that offers and agreements of compromise cannot be construed to be admissions or used as a basis for prejudicial conclusions in future legal proceedings. *Williams v. First National Bank*, 216 U. S. 582, 30 S. Ct. 441, 54 L. ed 625; *St. Louis Mining and Manufacturing Co. v. Montana Mining Co.*, 171 U. S. 650, 19 S. Ct. 61, 43 L. ed 320.

An admission of fact in such an offer or agreement can be the basis of a conclusion, but the matter com-

promised cannot be the basis of any future conclusions. The Board recognized this in its orders in the Indiana Bell and Southern Bell cases by entering findings of fact upon the stipulations of fact made by the parties and *by its failure* to enter any findings that CWA had violated the Act. Thus it found as a matter of fact in each case that the controversy affected interstate commerce and that CWA and the affiliated locals involved were labor organizations; but it made no findings in either case on the subject matter of compromise — that is, guilt of the unfair labor practices charged.

Compromise settlements of unfair labor practice cases are based upon valuable consideration both to private parties and to the Board. *Twenty-third Annual Report of the National Labor Relations Board*, 1958, p. 4, dramatically illustrates the importance to the Board and its General Counsel (and, of course, to the general public) of the ability to dispose of cases by settlement when it states:

> "The General Counsel's staff in the field offices closed 6,654 unfair labor practice cases without formal action, and issued complaints in 822 cases.
>
> "Of the 6,654 unfair labor practice cases which the field staff closed without formal action, *725, or 11 percent, were adjusted by various types of settlements;* 2,242 or 34 percent, were administratively dismissed after investigation. In the remaining 3,687 cases, or 55 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases *the withdrawals actually reflected settlement of the matter at issue between the parties.*"

Thus, it can be safely concluded that at least one third of the entire business of the General Counsel's office was transacted and disposed of by agreement and com-

promise. Without the ability to close cases by settlement, hundreds of additional professional employees and millions more in dollars would be required to administer the Act annually.

Untold millions of dollars are saved annually by private parties through compromise and settlement of unfair labor practice cases. However, if these parties are unable to know that compromise settlements with the Board will be non-prejudicial, they will not long continue this practice.

Nothing could more effectively undermine the administration of the Act than for the Courts to permit the Board and its General Counsel to breach this most basic concept of public policy and of honesty and good faith by using compromise settlements, which contain no admissions of guilt, as a basis for prejudicial conclusions in future cases.

III.

THE DECISION OF THE SIXTH CIRCUIT IN THIS CASE IS IN DIRECT CONFLICT WITH A CONCURRENT DECISION OF THE FIFTH CIRCUIT.

The facts of this case are substantially identical to the facts recited in the decision of the Court of Appeals for the Fifth Circuit in *NLRB v. Local 926, International Union of Operating Engineers, AFL-CIO*, 267 F. 2d 412, 44 LRRM 2200 (CA-5, May 26, 1959); however, the opinions and decrees of the two courts are diametrically opposite in the conclusions reached. Unfortunately Petitioners could not direct the attention of the Sixth Circuit to this conflict as their Motion for Reconsideration and Rehearing was filed on June 2, 1959, whereas the Fifth Circuit decision was first published unofficially only on June 8 by the Bureau of National Affairs.

From the facts in the two cases, one would draw a conclusion that the Labor Board has abandoned its policy of adherence to the decision of this Court in *Express Publishing Company, supra,* and has adopted instead a policy of repudiating the privileged status of compromise settlement agreements which it has made.

Because the decision of the Fifth Circuit so appropriately expresses the views which Petitioners regard to be legally and morally correct on the facts of the two cases, they take the liberty of quoting from it at length:

> "The Union makes two contentions. * * * Second, the Union contends that the facts in the case do not justify an order as broad as the one issued by the Board.
>
> * * *
>
> II. The scope of the order is a different matter. The order, in part, requires the Union to:
>
> > " '1. Cease and desist from engaging in, or inducing or encouraging the employees of any employer, other than Columbus Construction Company, to engage in, a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services where an object thereof is to force or require any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with Columbus Construction Company, *or with any other employer or person.*' (Emphasis by the Court)
>
> "A 'broad order' was not requested in the pleadings, at the hearing, in argument, or in briefs before the Trial Examiner. The Trial Examiner recommended the usual order requiring the Union to cease and desist from inducing secondary em-

ployees to strike or to refuse to handle goods where an object is to force anyone to stop doing business with Columbus, the primary employer. The Board attempts to justify the breadth of its order on the ground that 'the Respondent has engaged in similar violations in respect to other employers in the area * * * [and] it can be reasonably expected that the Respondent will continue to commit similar violations in the future.' The alleged 'similar violations' were two Campbell Coal cases. (Footnote omitted)

"At the trial of the case, the government introduced no evidence relating to any other instances of alleged violations by the Union showing a statewide or area-wide policy of engaging in secondary boycotts. No mention was made of the Campbell Coal cases. * * * As a matter of fact no evidence was taken in those cases upon which the Board could base a determination as to whether the Union had violated the Act. The Campbell Coal cases were terminated without prejudice by a 'Settlement Stipulation' containing a provision that the Union 'does not admit it has committed the acts or has engaged in the unfair labor practices alleged in the consolidated complaint." (Footnote omitted)

"Section 10 (c) of the Act expressly authorizes the Board, upon finding an unfair labor practice, to enter an order requiring the offending party 'to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act.' This is broad language. But it imposes a corresponding responsibility not to issue a broad order without the record to support it.

"In this case the order is designed to protect not only the employers doing business with Columbus Construction Company but 'any other employer or person.' There is nothing in the record to justify any such broad coverage. To find support for

its order, the Board must go beyond the record, to the Campbell Coal cases, and, in effect, repudiate the stipulation solemnly entered into by the Board.

"We are aware of the considerations supporting a broad grant of discretion to the Board in determining the proper remedy for a violation of the Act. We consider more important, and basic to a fair administration of the Act, the hard-won principle of Anglo-American law that a judgment or order must find adequate support in the record. An order of a court or federal agency that goes beyond the record to penalize an offender as a bad actor smacks too much of attainder to be acceptable to this Court. We are committed to a narrower view of the proper scope of orders that may furnish the basis for contempt proceedings. *NLRB v. Ford Motor Co.*, 5 Cir., 1941, 119 F. 2d 326, 8 LRRM 656; *NLRB v. Dallas General Drivers, etc., Local 745*, 5 Cir., 1956, 228 F. 2d 702, 37 LRRM 2356; *Truck Drivers Local Union 728 v. NLRB*, 5 Cir., April 8, 1959, ... F. 2d ....., 43 LRRM 2813. On this issue we are in general agreement with *International Brotherhood of Teamsters, etc. v. NLRB*, U.S. App. D. C. 1958, 262 F. 2d 456, 43 LRRM 2198 and *National Labor Relations Board v. Cleveland-Cliffs Iron Co.*, 6 Cir., 1943, 133 F. 2d 295, 12 LRRM 550. See also *NLRB v. Express Publishing Co.*, 1941, 312 U.S. 426, 61 S. Ct. 693, 85 L. Ed. 930, 8 LRRM 415.

"Accordingly, we modify the order of the Board by deleting the phrase of the first paragraph: '*or with any other employer or person.*' As modified, we grant enforcement of the order."

IV.

THE WORDS "OR ANY OTHER EMPLOYER" IN THE BOARD'S ORDER AS ENFORCED BY THE COURT, WITHOUT ANY GEOGRAPHIC LIMITATION AND WITHOUT ANY EXPRESSION IN THE COURT'S DECREE DELIMITING THE EFFECT OF ITS INJUNCTION, CONSTITUTE THE COURT OF APPEALS A COURT OF FIRST INSTANCE FOR THE TRIAL OF UNFAIR LABOR PRACTICES.

With, or without, a consideration of the orders of the Board based upon compromise settlement in the *Indiana Bell* and *Southern Bell* cases, the words "or any other employer" constitute the Court of Appeals a court of first instance for the trial of future unrelated unfair labor practices.

(a) Local 4372 was not even a party to the Settlement Stipulations nor a Respondent to the Order of the Board in the *Indiana Bell* and *Southern Bell* cases which the Board contended could be used against it. There was no evidence in the record in this case that any employees, other than those working for Ohio Consolidated, were, or could have been, restrained or coerced in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended. The fact that employees of other employers, not involved in the labor dispute, may have heard of improper conduct engaged in by members of Local 4372, would be immaterial unless it were shown that they were asked to perform work for Ohio Consolidated during the strike and thereby become its employees. Absent these circumstances, which do not appear in the record, the Section 7 rights of employees other than those working for Ohio Consolidated were not involved in the strike.

The operations of Petitioner Local 4372 are confined to a part of the State of Ohio and to the representation of the employees of only one employer — Ohio Con-

solidated. An injunction, the scope of which extends beyond the geographical area of its operations, can be construed to render Local 4372 responsible for the acts of other CWA affiliated local unions under some circumstances. The Decree of the Court, which applied to the restraint and coercion of the employees of Ohio Consolidated "or any other employer," regardless of location, invites the trial in the Court of Appeals of allegations of initial labor act violations. Thus, the Court, unless the effect of its decree is delimited by appropriate language, legally can be asked to adjudicate complicated factual questions of agency involving the alleged responsibility of Local 4372 for acts of other CWA local unions in widely divergent geographical areas. This Court has already held in *Express Publishing Company, supra,* and *May Department Stores, supra,* that it was not the intention of Congress that the initial determination of such factual questions should be vested in the Courts of Appeal. A "Court of Appeals should not become a labor court of first instance by virtue of its contempt powers.' *International Brotherhood of Teamsters v. NLRB,* 262 F2d 456, (CA D. C. 1958)." *Morrison Knudsen, Inc. v. NLRB,* ..... F2d ....., 44 LRRM 2680, 2681 (CA-9, No. 16301, August 10, 1959).

It must also be said that the decision of the Board in this case and its contention in its brief in the Court of Appeals, that employees of other employers may have heard of such conduct and that Section 8 (b) (1) (A) was thereby violated, seeks to make a mere police statute of the Act, and mere police magistracies of the Courts of Appeal if they are authorized to determine initial Labor Act violations. Congress, in enacting the Labor Act, left to the states the police function of con-

trolling violence. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, ... S. St., ..., 43 LRRM 2838. The Act seeks to protect the right of employees to abstain from concerted activity, that is, to work during a strike. It makes no proscription against violence, *eo nomine*, but only against "restraint and coercion."

Without evidence in this case that employees, other than those of Ohio Consolidated, were restrained or coerced in their rights, a decree as to such employees of other employers can only be designed to control violence, or threats thereof, *in vacuo*, which is a police function remaining to the states.

(b) As to the Communications Workers of America, AFL-CIO, there was no pleading, allegation, evidence or finding *in this record* that violence and threats were, or are, an habitual course of conduct or normal pattern of its operations. The Board did not so find and there is no factual basis in the record for such a finding.

In an effort to supply this deficiency in the Court of Appeals, Counsel for the Board injected into their brief the *compromise* settlements in two isolated CWA labor board cases, although there is no indication that the Board considered these cases in formulating its order.

Since CWA made no admissions of guilt in those cases and since the Board made no findings or conclusions of guilt in them, a conclusion that CWA is 'in general opposition to the purposes of the Act,' as contended for by the Board before the Circuit Court, should not be based upon such privileged actions.

Even if the law permitted this to be done in the abstract, such would be improper under the facts shown

by the Settlement Stipulations themselves. Each of the Settlement Stipulations provided a direct remedy by court enforcement if the Board found that CWA had failed to comply with the terms of its agreement. In the *Indiana* case, there has never been any contention that CWA has not fully complied with its agreement and the Board Order. In the *Southern Bell* case, Southern Bell attempted to instigate court enforcement against CWA when one of the local unions party to the agreement breached the compromise settlement. This application of Southern Bell was adjudicated by the Board's General Counsel concurrently with his application, on behalf of the Board, for enforcement of its Order in the present case. On the motion for court enforcement of the *Southern Bell* case, the Board's General Counsel declined to institute legal proceedings, finding:

> "At the inception of a nation-wide strike called against the company, the International Union warned its local unions against engaging in violence or other misconduct. These warnings were heeded by all local affiliates, except one whose strike activity at the company office within its jurisdiction was marked by mass picketing and other misconduct. The misconduct occurred despite the determined efforts of an International Representative to prevent it. On the complaint of the International Representative, the Local Union official responsible for the misconduct was removed from office at the conclusion of the strike. The strike lasted only four days and was entirely peaceful at all other company locations throughout the country." (*General Counsel's Administrative Rulings*, Case No. S-739, November 27, 1958, 43 LRRM 1237.)

The findings of the Board's highest authorized agent in the above qotation are, to say the least, inconsistent

with the concurrent contentions of the same agent made before the Court of Appeals in this case when he contended that misconduct of members of *one out of three* CWA local unions engaged in the Ohio Consolidated strike reflect a 'general opposition to the purposes of the Act' on the part of CWA itself.

Irrespective of the inconsistency of these contentions, these circumstances are a potent signal of the dangers inherent in the broad scope of the Court's Decree and are a clear indication that it is entirely possible that the Court, in future contempt proceedings, would be asked to determine that CWA has violated the Court's decree in this case because the members of an affiliated local union in another geographical area have, possibly because of incitation by irresponsible local union officers, engaged in acts or threats of violence.

The Communications Workers of America is a nation-wide association, having approximately 260,000 individual members, approximately 730 affiliated local unions, and contractual relations with almost 100 employers. It represents and deals with the employees, not only of these employers, but also of other employers whose employees are being organized. It seems improper that CWA should have been held responsible for the acts of the members of one local union engaged in the strike against Ohio Consolidated, when the members of two other local unions engaged in the same strike were not shown to have engaged in any improper conduct. However, the Board's Order and the Court's Decree takes the position that CWA was responsible, derivatively, for the acts of the members of this local union because it approved the strike and provided financial assistance. This same legal argument of the Board (having been approved by the Court in its Decree and

being carried forward into contempt proceedings) would authorize the Court of Appeals to punish CWA for a myriad of acts and circumstances differing from those in the present case and involving different employers and the members of different local unions. CWA is not an omnipotent presence with the ability to prevent violations by 730 virtually autonomous local unions.

Congress did not intend that the Court of Appeals should try initial Labor Act violations; however, the Court's Decree presumably, without any language of limitation, covers the employees of every one of the employers with whom CWA deals, as well as all other employers in the United States, no matter where located. Under its Decree, the Court of Appeals for the Sixth Circuit, as a court of first instance, can adjudicate all of the issues of fact involved in the actions of an affiliated union in Seattle, Washington, and determine whether an unfair labor practice occurred, whether it was merely an isolated instance, and whether CWA was responsible therefor on vicarious principles.

The Act contemplates that CWA would be entitled to an initial determination of such complicated factual issues by the designated trier of the facts — the Labor Board — without being confronted, in the first instance, with the onerous prospect of being held in contempt of a Court of Appeals.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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SEP 22 1959

JAMES R. BROWNING, Cl

In the

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

NATIONAL LABOR RELATIONS BOARD,

Respondent

PETITIONER'S APPENDICES

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INDEX TO PETITIONERS' APPENDICES

Appendix A—Pertinent Statutes 1a

Appendix B—Excerpt from brief of Counsel for National Labor Relations Board in the court below 6a

Appendix C—Excerpt from brief of Respondents (Petitioners here) in the court below . 10a

Appdenix D—Full Text of Unreported Settlement Stipulation and Order of Board in Indiana Bell Telephone and Telegraph Company case 12a

Appendix E—Full Text of Unreported Settlement Stipulation and Order of Board in Southern Bell Telephone and Telegraph Company case 23a

Appendix F—Opinion and Order Denying Rehearing in the court below 40a

Appendix G—Decision and Order of NLRB 41a

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APPENDIX A

The pertinent provisions of the National Labor Relations Act, as amended, (61 Stat. 136, 29 U.S.C., Supp. V. Sec. 151, *et seq*), are as follows:

29 U.S.C., Supp. V, Sec. 152:

"Sec. 2. When used in this Act —

* * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or and individual employed by his parent or spouse, or any

individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined."

29 U.S.C., Supp V, Sec. 157:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

29 U.S.C., Supp. V, Sec. 158 (b) (1) (A):

"Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents —

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *"

29 U.S.C., Supp. V, Sec. 160 (c) and (e):

"Sec. 10 (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay

may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further,* That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

" * * *

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor

practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except

that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)"

APPENDIX B

Excerpt of Pages 24 Through 28 From Brief of Counsel for National Labor Relations Board in the Court below, which Inject Into the Case For the First Time, and Seek to Base Prejudicial Conclusions Upon, Compromise Settlement Stipulations in Other Cases.

"III. Whether the Board's Order Is Proper. The Board Contends That the Question Should Be Answered "Yes."

"As previously noted, the Board's order requires respondents to cease and desist from in any manner restraining or coercing the employees of Ohio Consolidated 'or any other employer' in the exercise of their statutory rights. In their answer, respondents contend that the order should not include the words 'or any other employer' on the ground that 'there is no evidence in the record that the employees of any other employer (except while in the employ of [the Company] and therefore its employees) were in any manner affected by the facts of this case, and * * * there is no evidence of any repeated course or pattern of conduct on the part of Respondents directed toward the employees of any other employer or of employees generally, so that the order of the Board * * * goes beyond the facts of the case and is unauthorized by any substantial evidence in the record and is therefore punitive, rather than remedial, in its scope.' We submit that the Board's order is proper.

"As this Court observed in *N.L.R.B. v. United Mine Workers of America, District 23,* 195 F. 2d 961, 963, certiorari denied, 344 U.S. 920, "The Board has broad power to determine the necessary scope of its orders and it is authorized to restrain other violations the danger of whose commission in the future is to be anticipated from conduct in the past." Both the Board's records in other cases involving the CWA[14] and the record in the instant case made it reasonable for the Board to anticipate further misconduct of the kind prohibited in its order. Thus, more than three years before the strike against Ohio Con-

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"[14] The Board and this Court may, of course, take notice of such proceedings, See *N. L. R. B.* v. *Vulcan Forging Co.*, 188 F. 2d 927, 930 (C. A. 6), affirming as to this point 85 NLRB 621, 626; *N .L. R. B.* v. *Armstrong Tire & Rubber Co.*, 43 LRRM 2470, 2471, n. 2 (C.A. 5, January 30, 1959); *N.L.R.B.* v. *Crowley's Milk Co.*, 208 F. 2d 444, 445-446 (C.A. 3); *N.L.R.B.* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 139-140 (C.A. 1), certorari denied, 346 U.S. 887."

solidated, the Board issued an order against CWA, pursuant to a settlement stipulation executed by it, prohibiting conduct with respect to employees of the Indiana Bell Telephone Company similar to that in which CWA engaged during the Ohio Consolidated strike.[15] Thereafter, during the Ohio Consolidated strike here involved, the Board issued another order against CWA, pursuant to a settlement stipulation executed by it, prohibiting such conduct with respect to employees of the Southern Bell Telephone and Telegraph Company.[16] This history shows that a Board order protecting Indiana Bell's employees did not obviate the need for subsequent orders prohibiting similar conduct against employees of Southern Bell and Ohio Consolidated.[17] In the circumstances, it was wholly reasonable for the Board to issue here an order prohibiting such conduct with respect to employees of any employer. The Act does not require the Board to proceed against a repeated

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"[15] Specifically, the order required CWA to cease and desist from assaulting, physically harming or otherwise using force and violence against Indiana Bell's employees, or threatening to do so; picketing Indiana Bell's premises in such a manner as to deny to employees and others ingress to and egress from said premises; physically preventing employees and others from working at Indiana Bell's plants; engaging in or threatening to engage in reprisals against non-striking employees and others both in and away from Indiana Bell's plants; or in any other manner restraining or coercing Indiana Bell's employees in the exercise of their statutory rights. The case is unreported; it is docketed on the records of the Board as Case No. 35-CB-123. Also, subject to the order are 15 CWA locals, none of them the local involved in the case at bar."

"[16] That order required CWA to cease and desist from assaulting, physically harming or otherwise using force and violence against any employees of or applicants for employment by Southern Bell, or others, or attempting to do so; picketing Southern Bell's premises in such a manner as to deny employees and others free ingress to egress from said premises; making threatening telephone calls to employees; following employees and others from Southern Bell's premises in order to restrain or coerce them; throwing objects at, against, or toward employees or others entering or leaving Southern Bell's premises, or at or against such premises in which employees are working; restraining or coercing Southern Bell's employees by damaging or destroying, or attempting to damage or destroy, property belonging to them or to Southern Bell; or in any other manner restraining or coercing Southern Bell's employees in the exercise of their statutory rights. The cases are unreported; their docket numbers on the records of the Board (each preceded by "10-CB") are 291, 329, 331, 333, 334, 337, 340, 341, 349-352, 354, 355, 357, 359, 360, 365-367, 369, 371, 373, 375, 376, 382, 411, and 416. Also subject to the order are 27 CWA locals, none of them the local involved in the case at bar."

"[17] The Indiana Bell order required CWA to post notices in 1 State, and the Southern Bell order required such posting in 9 states."

offender on a piecemeal basis. See *N.L.R.B. v. Springfield Building and Construction Trades Council*, 43 LRRM 2320, 2323-2324 (C.A. 1, December 31, 1958).

"Moreover, the record in the case at bar, even standing alone, made it reasonable for the Board to anticipate that respondents might repeat their misconduct with respect to the employees of other employers. Thus, all of respondent local's strike directors and many of its picket captains took part in respondents' unfair labor practices over a two-month period, beginning four months after the strike was called. Nevertheless, respondents' top officials, although they learned of these incidents (B.A. 231a-240a, 427a-474a, 491a, 395a), did not remove the strike leaders. The record shows that all of the strike directors retained their positions (except one who resigned and subsequently became a picket captain). Moreover, respondent CWA continued to pay strike benefits to the strikers, provided bail for strikers jailed for misconduct, and continued publicly to espouse the strikers' cause (B.A. 195a-198a, 204a-205a, 212a-213a, 486a-492a). Under such circumstances, it was reasonable for the Board to attempt to insure that respondents' general opposition to the purposes of the Act would not be reflected in their conduct with respect to the employees of other employers.[18]

"Finally, the record warrants an inference that respondents' misconduct in the case at bar restrained and coerced employees of other employers. The record suggests that a number of the immediate victims of respondents' unfair labor prcatices were on the payroll of employers other than Ohio Consolidated (B.A. 112a-113a, 143a-144a, 158a, 176a-177a, 205a-206a, 208a,

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"[18] The order here in question is similar to other orders issued by the Board in analogous cases. See *Local 410, United Furniture Workers of America, CIO (Brooklyn Spring Corporation)*, 113 NLRB 815, enforced, 233 F. 2d 539 (C.A. 2); *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company)*, 116 NLRB 842, 846; *United Mine Workers of America, District 2 (Mercury Mining and Construction Corporation)*, 96 NLRB 1389, 1392, enforced, 202 F. 2d 177 (C.A. 6); *United Mine Workers of America, District 31 (L. E. Cleghorn)*, 95 NLRB 546, 550, enforced, 198 F. 2d 389 (C.A. 4) certiorari denied, 344 U.S. 884; *United Mine Workers of America (West Kentucky Coal Co.)*, 92 NLRB 916, 919, enforced, 195 F. 2d 961 (C.A. 6), certiorari denied, 344 U.S. 920; *Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company)*, 115 NLRB 1123, 1125."

214a). Moreover, respondents' misconduct was publicized in newspapers and over the radio, and employees of other employers were accordingly put on notice that respondents were prepared to further their cause by unlawful acts. Furthermore, several other unions—including another local of respondent CWA—gave financial assistance to respondents' strike (B.A. 7a; 380a-381a); and it is reasonable to suppose that at least some of their members were aware of respondents' strike tactics.

"For these reasons, we believe that the Board's order is entitled to this Court's approval."

APPENDIX C

Excerpt of Pages 16 Through 19 From Respondents' (Petitioners here) Brief in the Court Below.

"In the present case the words "in any manner" and "or any other employer" in Paragraph 1 of the Board's Order go beyond the unfair labor practices alleged or found by the Board, and go beyond the scope of any order authorized by the evidence and findings in the case.

"Recognizing this, the Board makes no real attempt to justify its order on the basis of the record in this case[8], but rather seeks, at pages 24 through 26 of its brief, to justify the scope of the order by contending that it may look to past conduct of CWA for such authorization. (See par. 4, Resp. Answer, p. 35b, *infra).*

"These contentions of the Board are facetious and seek to annihilate the most basic considerations of public policy and of good faith dealing as they apply in the circumstances of this case.

"[8] At pages 27 and 28 of its brief the Board makes a casuistic attempt to rely upon the record. We have already pointed out in footnote 7, *supra,* that the arguments on page 28 are specious.

On page 27 of its brief in footnote 18, the Board cites certain cases in which it states similar sweeping orders were entered. In every one of the cases cited, with one exception, the Board made express findings that the conduct restrained was part of a "pattern of conduct" which the evidence *in that case* showed would be immediately extended to other employers and employees unless restrained. Even in these cases, the effect of the Board's order was restricted to a particular geographic area or locality.

"In the one exception, *Brooklyn Spring Corp.,* 233 F. 2d 539, enforcing 113 NLRB 815, it does not appear that the language "or any other employer" was objected to or questioned on appeal. Hence this case is no precedent.

"The facts recited on page 27 of the Board's brief bring this case squarely within the decision in *Bitner Fuel Co.,* 92 NLRB 953,, 955, enf'd. 190 F. 2d 251 (CA-4), where the Board distinguished one of the cases cited in footnote 18 in its breif in this case, saying:

"the record in that case clearly indicated that the respondent there was engaged in a planned program to apply the same technique to all nonunion mines wtihin its jurisdiction. We are not satisfied on the record before us that District 31's conduct, confined as far as the evidence shows to Bitner's operations, warrants so broad an order here.

"Here the evidence shows that the conduct restrained was confined to the operation of Ohio Consolidated; hence, an order extending to other employers is unauthorized by the Board's own rules, as well as those of the courts, quoted *supra.*"

"As support from the past, the Board goes outside the record and asserts it has previously issued cease and desist orders against CWA in two cases prohibiting 8(b) (1) (A) activity; but it carefully refrains from setting forth in its brief any facts and circumstances concerning the *unpublished* orders in the Indiana Bell and Southern Bell cases, and it fails to apprise the Court of any of the history of these cases. While it says they were bases upon "settlement stipulation," it omits to include either the settlement stipulations or the Board orders in these cases in the record, in an appendix or in its brief. Such omission in understandable and was obviously intentional, since the settlement stipulations and orders themselves, if included, defeat the Board's argument.

"We have no alternative, since the Board is seeking to rely upon *unpublished* proceedings, *not of record,* than to set out these matters in full for the consideration of the Court, though we are doubtful whether, had the Board not done so, the Board or the Court could properly take notice of matters not of public record and not shown in evidence.[9]

"Accordingly, we include the settlement stipulations and Board orders in the Indiana Bell and Southern Bell cases in this brief as Appendices B and C, respectively."

"[9] As authority for the consideration of the two previous CWA cases, the Board, in footnote 14 on page 24 of its brief, cites cases to the effect that the Board and the Court can take notice of *adjudicated and published* actions and decisions of the Board as background material to justify or authorize Board or Court action. We do not question this principle; but such principle is here inapposite. As we will hereinafter demonstrate, the two previous CWA cases are *compromise* settlements in which there was no *adjudication or finding* that CWA had engaged in any unfair labor practices.

"These cases are not published in the reports of the Board or in any other public book or document of record, such as the Federal Register. While the lack of publication alone would not prevent the Court from taking judicial notice of them, it would require that the Board should prove these matters in evidence before judicial notice could be taken."

APPENDIX D

Full Text of Unreported Settlement Stipulation and Board Order in Indiana Bell Telephone Company Case.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NINTH REGION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5710, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5700, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5701, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5702, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5704, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5706, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5707, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5708, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5709, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5800, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5801, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5802, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5807, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5808, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5810, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5811, COMMUNICATIONS WORKERS OF AMERICA, CIO
and
INDIANA BELL TELEPHONE COMPANY

Case No. 35-CB-123

SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND AMONG Communications Workers of America, CIO and its above-named Locals (hereinafter sometimes referred to as Respondents), by their representatives, by Indiana Bell Telephone Company, Charging Party (hereinafter sometimes referred to as the Company), by its officers and attorneys, and by Jerome H. Brooks, Counsel for the General Counsel of the National Labor Relations Board, Ninth Region, that:

1. Upon a Charge (said Charge being numbered 35-CB-123) filed by the Company on August 18, 1953, and served on Respondents on August 21, 22, 23and 24, 1953, receipt of which Charge is hereby acknowledged by Respondents, the General

Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), by the Regional Director for the Ninth Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act), and pursuant to Section 102.15 of the Board's Rules and Regulations, issued a Complaint and Notice of Hearing dated September 18, 1953, against Respondents. True copies of the aforesaid Charge, Affidavits of Service of said Charge, Complaint, Notice of Hearing thereon, and Orders Rescheduling Hearing were duly served by registered mail upon Respondents and the Company.

2. The Company is, and has been at all times material, a public utility engaged in the business of providing local and long distance telephone service to subscribers throughout the State of Indiana.

During the past twelve months the Company initiated, transmitted, and received long distance calls to and from points outside the State of Indiana, the charge for which exceeded $200,000. The Company is engaged in commerce within the meaning of Section 2, Subsections (6) and (7) of the Act.

3. Each of the Respondents is a labor organization within the meaning of Section 2, Subsection (5) of the Act.

4. All parties hereto expressly waive filing of Answer, Hearing, Intermediate Report of Trial Examiner, and filing of Exceptions and Oral Argument before the Board, the making of Findings of Fact or Conclusions of Law by the Board, and all further and other procedure before the Board to which Respondents may be entitled under the Act or the Rules and Regulations of the Board.

5. This Stipulation, together with the Charges, Affidavits of Service, Complaint, Notice of Hearing, and Orders Rescheduling Hearing, shall constitute the entire record herein and shall be filed with the Board.

6. Upon this Stipulation, and the record herein, as set forth in paragraph 5 above, and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

Each of the Respondents, Communications Workers of America, CIO, and its affiliated Locals Nos. 5710, 5700, 5701, 5702, 5704, 5706, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811; their officers, agents successors and assigns shall

I. Cease and desist from:

(a) Assaulting, physically harming or otherwise using force and violence against employees of the Indiana Bell Telephone Company, or threatening to do so;

(b) Picketing the premises of the Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress to and egress from said premises;

(c) Physically preventing employees and others from working at the plants of the Indiana Bell Telephone Company;

(d) Engaging in or threatening to engage in reprisals against non-striking employees and others both at and away from the plants of the Indiana Bell Telephone Company;

(e) In any other manner restraining or coercing employees of the Indiana Bell Telephone Company in the exercise their rights to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the the Act, as guaranteed in Section 7 of the National Labor Relations Act.

II. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act:

(a) Post immediately in conspicuous places at all of its business offices and meeting halls in Indiana, copies of the Notice to All Members attached hereto, marked "Appendix A". Appropriate copies of said Notice to All Members, to be furnished by the Re-

gional Director for the Ninth Region, which, after being duly signed, shall be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail signed copies of the Notice attached hereto as "Appendix A" to the Regional Director for the Ninth Region, for posting, the Indiana Bell Telephone Company willing, at the office and places of business of the Indiana Bell Telephone Company, in places where notices to employees are customarily posted;

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

7. It is further stipulated and agreed that any United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its decree enforcing the order of the Board in the form set forth in paragraph 6 above. The Respondents waive all defenses to the entry of the decree, including the right to receive notice of the filing of an application for the entry of such decree provided that such decree is in the words and figures of the order set forth in paragraph 6 above. It is further agreed that no such application by the Board for such a decree enforcing the order of the Board will be made by the Board unless there has been a failure to comply with the order of the Board as stated in paragraph 6 above. Any finding that there has been a failure to comply shall be made by the Regional Director upon his administrative determination which shall be final and binding.

8. This Settlement Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Stipulation, except that it is understood that the signing of this Stipulation by Respondents does not constitute an admission by them that they have violated the Act.

9. This Settlement Stipulation is subject to the approval of the National Labor Relations Board, and is of no force and effect unless and until the Board has approved this Stipulation. Upon the Board's approval, each of the Respondents will immediately comply with the provisions of the Order as set forth in paragraph 6 above.

Signed this.....day of May, 1954, at Washington, D. C.

COMMUNICATIONS WORKERS OF AMERICA, CIO, AND ITS AFFILIATED LOCALS NOS. 5710, 5700, 5701, 5702, 5704, 5706, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811

By_____
Attorney

Signed this 27th day of May, 1954, at Washington, D. C.

INDIANA BELL TELELPHONE COMPANY

By_____
Attorney

Signed this 18th day of May, 1954, at Indianapolis, Ind.

Jerome H. Brooks, Counsel for General Counsel
National Labor Relations Board, Ninth Region
1200 Ingalls Buildings, 6 East Fourth Street
Cincinnati 2, Ohio.

"APPENDIX A"

NOTICE TO ALL MEMBERS

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, based upon a Stipulation, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT assault, physically harm or otherwise use force and violence against employees of Indiana Bell Telephone Company, or threaten to do so.

WE WILL NOT picket the premises of Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress to and egress from said premises.

WE WILL NOT physically prevent employees and others from working at the plants of Indiana Bell Telephone Company.

WE WILL NOT engage in [illegible]en to engage in reprisals against non-striking [illegible]s or others either at or away from the plants of [illegible]iana Bell Telephone Company.

WE WILL NOT in any other manner restrain or coerce employees of Indiana Bell Telephone Company in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

Name of the labor organization posting the notice to be posted here

_____

(Labor Organization)

Dated_____ By_____

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other materail.

Indianapolis Indiana
DS-349

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5710, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5700, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5701, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5702, COMMUNICATIONS WORKERS OF AMERICA, CIO
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LOCAL NO. 5807, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5808, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5810, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5811, COMMUNICATIONS WORKERS OF AMERICA, CIO
and
INDIANA BELL TELEPHONE COMPANY

Case No. 35-CB-123

DECISION AND ORDER

Statement of the Case

On May 27, 1954, Communications Workers of America, CIO, and its affiliated Locals Nos. 5710, 5700, 5701, 5702, 5704, 5706, 5707, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811, (herein called Respondents) Indiana Bell Telephone Company, the Charging Party, (herein called the Company) ; and Jerome H. Brooks, counsel for the General Counsel, on behalf of the National Labor Relations Board, (herein called the Board), entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which Respondents may be entitled under the Act, and the Rules and Regulations of the Board, and the Respondents waived their right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein, and in accordance with Section 102.51 of the National Labor Relations Board Rules and Regulations—Series 6, as amended, the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the case, the Board makes the following:

Findings of Fact

1. The business of the Company

Indiana Bell Telephone Company is a public utility engaged in the business of providing local and long distance telephone service to subscribers throughout the State of Indiana.

During the past twelve months, the Company initiated, transmitted, and received long distance calls to and from points outside the State of Indiana, the charge for which exceeded $200,000. The Company admits, and we find that it is engaged in commerce within the meaning of the Act.

2. The organizations involved

Each of the Respondents is a labor organization within the meaning of Section 2 (5) of the Act.

ORDER

Upon the basis of the above findings of fact, the Settlement Stipulation and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that each of the Respondents, Communications Workers of America, CIO, and its affiliated Locals Nos. 5710, 5700, 5701, 5702, 5704, 5706, 5707, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811; their officers, agents, successors and assigns shall:

I. Cease and desist from:

(a) Assaulting, physically harming or otherwise using force and violence against employees of the Indiana Bell Telephone Company, or threatening to do so;

(b) Picketing the premises of the Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress and egress from said premises;

(c) Physically preventing employees and others from working at the plants of the Indiana Bell Telephone Company;

(d) Engaging in or threatening to engage in reprisals against non-striking employees and others both at and away from the plants of the Indiana Bell Telephone Company;

(e) In any other manner restraining or coercing employees of the Indiana Bell Telephone Company in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed in Section 7 of the National Labor Relations Act.

II. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places at all of its business offices and meeting halls in Indiana, and on all bulletin boards on the premises of Indiana Bell Telephone Company used by it, copies of the Notice to All Members attached hereto, marked "Appendix A." Appropriate copies of said Notice to All Members, to be furnished by its Regional Director for the Ninth Region shall, after being duly signed, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail signed copies of the Notices attached hereto as "Appendix A" to the Regional Director for the Ninth Region, for posting, the Indiana Bell Telephone Company willing, at the office and places of business of the Indiana Bell Telephone Company, in places where notices to employees are customarily posted:

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

Dated Washington, D. C., June 21, 1954.

Guy Farmer	Chairman
Abe Murdock	Member
Ivar H. Peterson	Member
Philip Ray Rogers	Member
Albert C. Beeson	Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

"APPENDIX A"

NOTICE TO ALL MEMBERS

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, based upon a Stipulation, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT assault, physically harm, or otherwise use force and violence against employees of Indiana Bell Telephone Company, or threaten to do so.

WE WILL NOT picket the premises of Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress to and egress from said premises.

WE WILL NOT physically prevent employees and others from working at the plants of Indiana Bell Telephone Company.

WE WILL NOT engage in or threaten to engage in reprisals against non-striking employees or others either at or away from the plants of Indiana Bell Telephone Company.

WE WILL NOT in any other manner restrain or coerce employees of Indiana Bell Telephone Company in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

_____

(Labor Organization)

Dated_____ By_____

(Representative) Title

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Case No. 10-CB-291

LOCAL No. 3224, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-329

LOCAL No. 3902, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-331

LOCAL No. 3904, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-333

LOCAL No. 3905, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-334

LOCAL No. 3908, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-337

LOCAL No. 3911, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-340

LOCAL No. 3912, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-341

LOCAL No. 3109, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-349

LOCAL No. 3112, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-350

LOCAL No. 3114, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-351

LOCAL No. 3802, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-352

LOCAL No. 3804, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-354

LOCAL No. 3805, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-355

LOCAL No. 3808, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-357

LOCAL No. 3303, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-359

LOCAL No. 3304, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-360

LOCAL No. 3313, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-365

LOCAL No. 3314, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-366

LOCAL No. 3315, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-367

LOCAL No. 3317, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-369

LOCAL No. 3321, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-371

LOCAL No. 3403, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-373

LOCAL NO. 3406, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-375
LOCAL NO. 3407, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-376
LOCAL NO. 3601, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-382
LOCAL NO. 3504, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-411
LOCAL NO. 3509, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-416
and
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND AMONG Communications Workers of America, AFL-CIO, and the above-named Locals of Communications Workers of America, AFL-CIO (hereinafter sometimes referred to as Respondent CWA and Respondent Locals, or, collectively, as the Respondents) by their attorney, by Southern Bell Telephone and Telegraph Company, the Charging Party herein (hereinafter sometimes referred to as Southern) by its attorneys and by Frank E. Hamilton, Jr., Counsel for the General Counsel of the National Labor Relations Board, Tenth Region, that:

1. Upon a Charge filed by Southern on May 11, 1955, and served on Respondent CWA on May 12 and 13, 1955, the said Charge being docketed Case No. 10-CB-291, and Amended Charge in Case No. 10-CB-291 filed by Southern on May 23, 1956, and served on Respondent CWA on May 25, 1956, receipt of which Charge and Amended Charge is hereby acknowledged by Respondent CWA, and upon separate Charges filed by Southern, said Charges being docketed with the case numbers shown for the Respondent Locals as listed above and served on the Respondent Locals during August, 1955, receipt of which Charges are hereby acknowledged by each of the Respondent Locals, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), by the Regional Director for the Tenth Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act, and pursuant to Section 102.15 of the Board's Rules and Regulations, issued a separate Complaint and Notice of

Hearing in each of the hereinabove captioned cases which were dated May 31, 1956, against each of the Respondents. Thereafter, on July 2, 1956, the Regional Director for the Tenth Regional Office of the Board, pursuant to Section 102.33 of the Board's Rules and Regulations, issued an Order Consolidating Cases. True copies of the aforesaid Charges, Amended Charge, Complaints, Notices of Hearing and Order Consolidating Cases were duly served by registered mail upon Southern and each of the Respondents and receipt of such documents is hereby acknowledged by the Respondents.

On July 10, 1956, the hearing in each of the cases was opened before a Trial Examiner of the National Labor Relations Board and, thereafter, on December 13, 1956, the Trial Examiner entered an order severing all other cases named in the Order Consolidating Cases from the hereinabove captioned cases.

2. Southern is, and at all times material herein has been, a New York corporation with principal offices in Atlanta, Georgia. At all times material herein Southern has been continuously engaged in the business of furnishing toll and local telephone and related services in each of the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi, and has maintained and maintains places of business and transmission facilities at various points in each of the aforesaid states.

Southern receives more than $10,000,000 annually for interstate telephone service. Southern is engaged in commerce within the meaning of Section 2, Subsections (6) and (7) of the Act.

3. Each of the Respondents is a labor organization as defined in Section 2, Subsection (5) of the Act.

4. All parties hereto expressly waive further hearing, Intermediate Report of Trial Examiner, the filing of Exceptions and Oral Argument before the Board, the making of Findings of Fact or Conclusions of Law by the Board, and all further and other procedure before the board to which the Respondents may be entitled under the Act or the Rules and Regulations of the Board.

5. This Stipulation, together with the Charges, Amended Charges, Complaints, Notices of Hearing, Order Consolidating

Cases, the Respondents' Answers and Order Severing Cases shall constitute the entire record herein and shall be filed with the Trial Examiner for transmission to the Board.

6. Upon this Stipulation, and the record herein as set forth in paragraph 5 above, and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

The Respondents, Communications Workers of America, AFL-CIO; Local 3224, Communications Workers of America; Local 3902, Communications Workers of America; Local 3904, Communications Workers of America; Local 3905, Communications Workers of America; Local 3908, Communications Workers of America; Local 3911,Communications Workers of America; Local 3912, Communications Workers of America; Local 3109, Communications Workers of America; Local 3112, Communications Workers of America; Local 3114, Communications Workers of America; Local 3802, Communications Workers of America; Local 3804, Communications Workers of America; Local 3805, Communications Workers of America; Local 3808, Communications Workers of America; Local 3303, Communications Workers of America; Local 3304, Communications Workers of America; Local 3313, Communications Workers of America; Local 3314, Communications Workers of America; Local 3315, Communications Workers of America; Local 3317, Communications Workers of America; Local 3321, Communications Workers of America; Local 3403, Communicaitons Workers of America; Local 3406, Communications Workers of America; Local 3407, Communications Workers of America; Local 3501, Communications Workers of America; Local 3504, Communications Workers of America; Local 3509, Communications Workers of America; their officers, agents, successors and assigns shall

1. Cease and desist from:

   (a) Assaulting, physically harming or otherwise using force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempting or threatening to do so;

(b) Picketing the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

(c) Making threatening telephone calls to employees;

(d) Following employees and others from the premises of Southern Bell Telephone and Telegraph Company in order to restrain or coerce them;

(e) Throwing objects at, against, or toward employees or others entering or leaving the premises of Southern Bell Telephone and Telegraph Company, or at or against such premises in which employees are working;

(f) Restraining or coercing employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telephone and Telegraph Company;

(g) In any other manner restraining or coercing the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Section 7 of the National Labor Relations Act to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to the extent that such right may be affected by an agreement requiring membership as authorized in Section 8(a) (3) of the Act.

II. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act.

(a) Post immediately in conspicuous places at all of their business offices and meeting halls in the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi, and on all bulletin boards on the premises of Southern Bell Telephone and Telegraph Company used by them, copies of the Notice to All Members attached hereto, marked "Appendix A." Appropriate copies of said Notice to All Members, to

be furnished by the Regional Director for the Tenth Region, shall, after being duly signed, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail copies of the Notice attached hereto as "Appendix A" to the Regional Director for the Tenth Region, for posting, the Southern Bell Telephone and Telegraph Company willing, at the office and place of business of Southern Bell Telephone and Telegraph Company, in places where notices to employees are customarily posted;

(c) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

7. It is further stipulated and agreed that whenever, in the opinion of the Regional Director for the Board's Tenth Region, the Respondents or any of them have violated Section 8(b) (1) (A) of the Act as to the employees of Southern Bell Telephone and Telegraph Company, the Board may apply to any appropriate United States Court of Appeals for enforcement of its Order herein, with or without notice to the Respondents and the Respondents hereby consent that a Decree enforcing the Board's said Order herein may be entered by such court pro confesso. The Respondents hereby waive all defenses to the entry of such Decree, including alleged compliance with the Board's Order and its right to receive notice of the filing of an application for the entry of such Decree, provided that same is in the language of the Order set forth in paragraph 6 above. The Respondents shall be required to comply with the affirmative provisions of said Order after entry of the Decree only to the extent that they have not already done so. Upon the Board's application as herein provided for enforcement of its Order and pending the entry of such a Decree of enforcement, the Respondents hereby consent to the immediate entry of a

temporary restraining order under Section 10(e) of the Act restraining them from violating any of the provisions of the Board's said Order herein or in any other manner violating Section 8(b) (1) (A) of theAct as to the employees of Southern Bell Telephone and Telegraph Company.

8. This Settlement Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Stipulation, except that it is understood that the signing of this Stipulation by the Respondents does not constitute an admission by them that they or any of them have violated the Act.

9. This Settlement Stipulation is subject to the approval of the National Labor Relations Board, and is of no force and effect unless and until the Board has approved this Stipulation. Upon the Board's approval, each of the Respondents will immediately comply with the provisions of the Order as set forth in paragraph 6 above.

Signed this 12th day of December, 1956, at Atlanta, Georgia.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
LOCAL 3224, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3902, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3904, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3905, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3908, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3911, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3912, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3109, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3112, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3114, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3802, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3804, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3805, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3808, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3303, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3304, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3313, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3314, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3315, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3317, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3321, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3403, COMMUNICATIONS WORKERS OF AMERICA

LOCAL 3406, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3407, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3601, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3504, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3509, COMMUNICATIONS WORKERS OF AMERICA

By Thomas S. Adair, Esquire
Adair & Goldthwaite
203 Mark Building
Atlanta, Georgia
ATTORNEYS FOR EACH OF THE RESPONDENTS

Signed this 12th day of December, 1956, at Atlanta, Ga.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
John C. McCree, Esquire
1245 Hurt Building
Atlanta, Georgia
William M. Pate, Esquire
1421 Healey Building
Atlanta, Georgia
ATTORNEYS FOR SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Signed this 12th day of December, 1956, at Atlanta, Ga.

Frank E. Hamilton, Jr.
Counsel for the General Counsel
National Labor Relations Board
Tenth Region
National Labor Relations Board, Tenth Region
528 Peachtree-Seventh Building
Atlanta, Georgia

NOTICE

"APPENDIX A"

TO ALL MEMBERS OF (NAME OF APPROPRIATE LABOR ORGANIZATION AND TO ALL EMPLOYEES OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY)

Pursuant to a Settlement Stipulation providing for an order by the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, you are hereby notified that:

WE WILL NOT assault, physically harm or otherwise use force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempt or threaten to do so;

WE WILL NOT picket the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

WE WILL NOT make threatening telephone calls to employees:

WE WILL NOT follow employees and others from the premises of Southern Bell Telephone and Telegraph Company in order to restrain or coerce them;

WE WILL NOT throw objects at, against or toward employees or others entering or leaving the premises of Southern Bell Telephone and Telegraph Company or at or against such premises in which employees are working;

WE WILL NOT restrain or coerce employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telephone and Telegraph Company;

WE WILL NOT in any other manner restrain or coerce the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Section 7 of the National Labor Relations Act to refrain from

engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act.

Name of Labor Organization Signing Notice
(Employer or Labor Organization)

Dated_____ By_____
(Representative) Title

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Atlanta, Georgia
DS-538

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Case No. 10-CB-291

LOCAL No. 3224, COMMUNICATIONS WORKERS OF AMERICA.....
Case No. 10-CB-329

LOCAL No. 3902, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-331

LOCAL No. 3904, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-333

LOCAL No. 3905, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-334

LOCAL No. 3908, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-337

LOCAL No. 3911, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-340

LOCAL No. 3912, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-341

LOCAL No. 3109, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-349

LOCAL No. 3112, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-350

LOCAL No. 3114, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-351

LOCAL No. 3802, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-352

LOCAL No. 3804, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-354

LOCAL No. 3805, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-355

LOCAL No. 3808, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-357

LOCAL No. 3303, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-359

LOCAL No. 3304, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-360

LOCAL No. 3313, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-365

LOCAL No. 3314, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-366

LOCAL No. 3315, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-367

LOCAL No. 3317, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-369

LOCAL No. 3321, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-371

LOCAL No. 3403, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-373

LOCAL NO. 3406, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-375
LOCAL NO. 3407, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-376
LOCAL NO. 3601, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-382
LOCAL NO. 3504, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-411
LOCAL NO. 3509, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-416

and

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

DECISION AND ORDER

Statement of the Case

On December 12, 1956, Communications Workers of America, AFL-CIO, and the above-named Locals of Communications Workers of America, AFL-CIO, herein referred to as the Respondents; Southern Bell Telephone and Telegraph Company, herein referred to as Southern; and Frank E. Hamilton, Jr., counsel for the General Counsel on behalf of the National Labor Relations Board, herein called the Board, entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which the Respondents may be entitled under the Act, and the Rules and Regulations of the Board, and the Respondents waived their right to contest the entry of a consent decree, or to receive further notice of the application therefor.[1]

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein and the proceeding is hereby transferred to and continued before the Board for the entry

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[1] It was stipulated and agreed that whenever, in the opinion of the Regional Director for the Board's Tenth Region, the Respondents or any of them have violated any of the provisions of the Board's Order herein, or have in any manner violated Section 8 (b) (1) (A) of the Act as to the employees of Southern Bell Telephone and Telegraph Company, the Board may apply to any appropriate United States Court of Appeals for enforcement of its Order herein, with or without notice to the Respondents and the Respondents consented that a Decree enforcing the Board's said Order herein may be entered by such court pro confesso.

of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the cases, the Board makes the following:

Findings of Fact

1. The business of Southern Bell Telephone and Telegraph Company

Southern Bell Telephone and Telegraph Company, a New York Corporation, with its principal offices in Atlanta, Georgia, is engaged in the business of furnishing toll and local telephone and related services in each of the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi, and has maintained and maintains places of business and transmission facilities at various points in each of the aforesaid states. Southern receives more than $10,000,000 annually for interstate telephone service. Southern admits, and we find, that it is engaged in commerce within the meaning of the Act.

2. The labor organizations involved

Communications Workers of America, AFL-CIO and the above-named Locals are labor organizations within the meaning of Section 2 (5) of the Act.

ORDER

Upon the basis of the above finding of fact, the Settlement Stipulation, and the entire record in the cases, and pursuant, to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents Communications Workers of America, AFL-CIO; Local 3224, Communications Workers of America; Local 3902, Communications Workers of America; Local 3904, Communications Workers of America; Local 3905, Communications Workers of America; Local 3908, Communications Workers of America; Local 3911, Communications Workers of America; Local 3912, Communications Workers of America; Local 3109, Communications Workers of America; Local 3112, Communications Workers of America; Local 3114, Communications Workers of America; Local 3802, Communications Workers of America; Local 3804, Communications Workers of America; Local 3805, Communications Workers of America; Local 3808, Communi-

cations Workers of America; Local 3303, Communications Workers of America; Local 3304, Communications Workers of America; Local 3313, Communications Workers of America; Local 3314, Communications Workers of America; Local 3315, Communications Workers of America; Local 3317, Communications Workers of America; Local 3321, Communications Workers of America; Local 3403, Communications Workers of America; Local 3406, Communications Workers of America; Local 3407, Communications Workers of America; Local 3601, Communications Workers of America; Local 3504, Communications Workers of America; Local 3509, Communications Workers of America; their officers, agents, successors and assigns shall:

I. Cease and desist from:

(a) Assaulting, physically harming or otherwise using force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempting or threatening to do so;

(b) Picketing the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

(c) Making threatening telephone calls to employees;

(d) Following employees and other from the premises of Southern Bell Telephone and Telegraph Company, or at or against such premises in which employees are working;

(f) Restraining or coercing employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telegraph and Telephone Company;

(g) In any other manner restraining or coercing the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Section 7 of the National Labor Relations Act to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to

the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

II. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places at all of their business offices and meeting halls in the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi and on all bulletin boards on the premises of Southern Bell Telephone and Telegraph Company used by them, copies of the Notice to All Members attached hereto, marked "Appendix A". Appropriate copies of said Notice to All Members, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail copies of the Notice attached hereto as "Appendix A" to the Regional Director for the Tenth Region, for posting, the Southern Bell Telephone and Telegraph Company willing, at the office and place of business of Southern Bell Telephone and Telegraph Company, in places where notices to employees are customarily posted;

(c) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply here with.

Dated, Washington, D. C., Jan. 28, 1957.

Boyd Leedom,	Chairman
Abe Murdock,	Member
Philip Ray Rogers,	Member
Stephen S. Bean,	Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

"APPENDIX A"

NOTICE
TO ALL MEMBERS OF

AND TO ALL EMPLOYEES OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Pursuant to a Settlement Stipulation providing for an order by the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, you are hereby notified that:

WE WILL NOT assault, physically harm or otherwise use force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempt or threaten to do so;

WE WILL NOT picket the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

WE WILL NOT make threatening telephone calls to employees;

WE WILL NOT follow employees and others from the premises of Southern Bell Telephone and Telegraph Company in order to restrain or coerce them;

WE WILL NOT throw objects at, against or toward employees or others entering or leaving the premises of Southern Bell Telephone and Telegraph Company or at or against such premises in which employees are working;

WE WILL NOT restrain or coerce employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telephone and Telegraph Company;

WE WILL NOT in any other manner restrain or coerce the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Sec-

tion 7 of the National Labor Relations Act to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

Name of Labor Organization Signing Notice
(Employer or Labor Organization)

Dated_____ By_____
(Representative) Title

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX F

OPINION AND ORDER DENYING REHEARING IN THE COURT BELOW

No. 13,729

Decided May 14, 1959

Before SIMONS and ALLEN, Circuit Judges; CHOATE, District Judge.

PER CURIAM. This cause came on to be heard upon petition of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act as amended, 29 U. S. C. Sec. 151 et seq. for enforcement of its order against respondents dated May 1, 1958.

An examination of the record in this case, and the consideration of the briefs and the oral argument convinces us that there is substantial evidence to support the Board's finding that the respondents violated Section 8 (b) (1) (A) of the National Labor Relations Act, 29 U. S. C. Sec. 158, and that the Board's procedure was valid and proper.

Respondents complain that paragraph 1 of the Board's order directing respondents to "Cease and desist from in any manner restraining or coercing employees of Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act" is too broad. We agree only as respects the use of the words "in any manner" which are, in our opinion, vague and subject to misinterpretation, and therefore we order that these words be stricken from said paragraph 1.

We direct that a decree should issue enforcing the Board's order against the respondents, after the aforementioned words "in any manner" are stricken from paragraph 1 thereof.

Accordingly, a decree in the usual form may be submitted.

ORDER DENYING REHEARING

(Filed June 26, 1959)

This cause having come on before the Court upon Respondents' Motion for Reconsideration and Rehearing, and the Court having examined said Motion and Memorandum, and being of the opinion that no new matter has been presented,

Said Motion for Reconsideration and Rehearing be and it is hereby denied.

APPENDIX G

DECISION AND ORDER OF NLRB

On April 11, 1957, Trial Examiner C. W. Whittemore issued his Intermediate Report in this case, finding that the Respondents had not engaged in the alleged unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Company and the General Counsel filed exceptions to the Intermediate Report and supporting briefs. The Respondents filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no error which can plainly be termed prejudicial was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the relevant findings of fact made by the Trial Examiner, as indicated below, but not his conclusions or recommendations.

1. As found by the Trial Examiner, the record shows, and the Respondent labor organizations do not strenuously dispute, that during the course of an economic strike against the Company they engaged in many incidents of coercive conduct or misconduct designed to impede the Company's operations and intimidate the personnel engaging in such operations. On July 18, 1956, shortly after the strike began, agents of the Respondents followed district manager Matz home from work in superior numbers.[1] On July 19, agents of the Respondents prevented Matz and foreman Kerns from leaving a Company exchange until police were called to the rescue. In the afternoon of July 29, as two Company supervisors were about to enter the Sciotoville exchange with an out-of-town person apparently not known to the pickets, agents of the Respondents prevented the "outsider" from entering. In the evening of the same day, a repetition of the incident occurred when the Respondents' agents admittedly stated that they wanted

[1]Member Fanning would not rely on this incident as a violation of Section 8 (b) (1) (A).

no "strangers" to go in, but again the police were called to the rescue. On July 30 agents of the Respondents prevented Company personnel from entering the New Boston and Sciotoville exchanges with supplies. On about the same day the Respondents' agents also prevented employee Maynard from entering the Sciotoville exchange until escorted in by police. On August 13, as two "strangers" were accompanying Company supervisors repairing Company equipment on the Matthews' farm, agents of the Respondents warned the "strangers" to get out of town if they had any concern for their families. As the two "strangers" were dining at the Turkey Shop restaurant that evening, agents of the Respondents "asked" them if they were getting out of town that night; and a large group of local residents carried out the warning to leave town by overturning their car, an act for which the Respondents did not disclaim responsibility. On August 22 an agent of the Respondents threatened a Company repairman with violence for taking his photograph. While Company personnel were righting an overturned Company truck in Reverend Butterbaugh's yard on August 23, one of the Respondents' agents was overheard to remark that he was going to get blood and hair on a pick handle he was wielding. On August 24 a crowd of the Respondents' agents uttered insulting remarks and vile names at Company personnel repairing Company equipment at the Star Yard, and followed them back to town blowing their horns all the way. On September 18 Company personnel were engaged in some Company work on Woodland Avenue when one of a larger number of agents of the Respondents reached into a Company truck parked at the curb and opened the glove compartment. When one of this number was shoved back by a Company supervisor, the Respondents' agents engaged in violence and forced the Company personnel to leave.

2. The Trial Examiner found that some five of the foregoing incidents constituted coercive misconduct by the Respondents. He further found that the Respondents also engaged in various other incidents, including those summarized above. The Respondents did not except to these findings and we agree with the finding that the Respondents engaged in such incidents. Unlike the Trial Examiner, however, we find that in all the instances above set forth the Respondents vio-

lated Section 8 (b) (1) (A) of the Act.

The Trial Examiner concluded that the Respondents did not violate Section 8 (b) (1) (A), because the incidents did not tend to restrain or coerce *employees* in the exercise of their statutory rights. He reasoned that the incidents of coercive misconduct had no tendency to restrain employees because they were directed against victims who at one time or another had been supervisors. However, we find that the object of one instance of misconduct (Maynard) was in fact an employee and not a supervisor, and the other victims were performing work of rank and file employees as strike replacements regardless of their quondam status as supervisors either of the Company or of related corporations from other areas. Moreover, even if the Respondents' misconduct were directed entirely against personnel acting as supervisors, which was not the case here, the circumstances were such that the Company's striking and non-striking employees were aware of it, and thereby tended to be restrained and coerced in their own exercise of the right to continue or discontinue striking as they wished.[2]

The Trial Examiner further reasoned that the Respondents' misconduct, apparently even assuming that it restrained or coerced employees, was justified by the Company's own anti-union conduct, which disqualified it from filing charges against the Respondents and manifested a contemptuousness of its employees statutory rights. However, the Act provided the Respondents with ready redress, if they believed the Company had engaged in misconduct by filing an appropriate charge with the General Counsel for his independent determination as to whether to proceed with the issuance and prosecution of a complaint. This the Respondents did not do. In the circumstances of this case, we may not permit the Respondents to restrain or coerce employees in the exercise of their statutory

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[2]We do not agree with the Trial Examiner's attempt to distinguish the contrary authority of W. T. Smith Lumber Company, 116 NLRB 507, enf'd 243 F. 2d 745 (C. A. 5). The purported distinction was based in part on the irrelevant testimony of many employees, that they were not in fact restrained or coeced by the respondents' conduct. See also Brooklyn Spring Corporation, 113 NLRB 815, enf'd 243 F. 2l 539 (C. A. 2).

rights merely because the Company may also have engaged in misconduct.[3]

Accordingly, we find that the Respondents restrained and coerced employees within the meaning of Section 8 (b) (1) (A) of the Act.

3. The General Counsel and the Company assail the Trial Examiner as prejudiced because of adverse ruling and recommendations, and criticize him because of certain comments he made during the hearing and in his Intermediate Report. Although we have found that the record as it stands warrants the 8 (b) (1) (A) finding and cease and desist order sought, thus making it unnecessary to consider the attack, we have nevertheless given the matter consideration because of its importance in assuring the public of the fairness and impartiality of our hearings. Without going into detail, we wish it to be understood that we do not endorse those rulings and comments of the Trial Examiner which may give the appearance of partiality[4] by extending the case beyond the single issue presented by the General Counsel, to-wit, whether the Respondents had restrained or coerced employees in the exercise of their statutory rights. As evidence and findings that the Company may also have unlawfully interfered with these employee rights are irrelevant, we do not consider or adopt them.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondents, Communications Workers of America, AFL-CIO, and its Local No. 4372, and their respective officers, representatives, agents, successors and assigns:

1. Cease and desist from in any any manner restraining or coercing employees of Ohio Consolidated Telephone Company

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[3]See Sunset Line and Twine Co., 79 NLRB 1487, fn. 6. We do not agree with the Trial Examiner's purported analogy to N. L. R. B. v. Indiana & Michigan Electric Company, 318 U. S. 9, decided before the Act was amended so as to confer equal protection on the employees' right to refrain from union activity.

[4]See Better Monkey Grip Co., 113 NLRB 938.

or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places in their business offices, meeting halls, and all other places where notices to their members are customarily posted, copies of the notice attached hereto marked "Appendix."[5] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after being duly signed by official representatives of the Respondents shall be posted by the Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail signed copies of the notice to the Regional Director for the Ninth Region for posting, Ohio Consolidated Telephone Company willing, at all locations where notices to the Company's employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after being duly signed by authorized representatives of the Respondents shall be forthwith returned to the Regional Director for such posting.

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps have been taken to comply herewith.

Dated Washington, D. C., May 1, 1958.

Boyd Leedom,	Chairman
Philip Ray Rodgers,	Member
Stephen S. Bean,	Member
Joseph Alton Jenkins,	Member
John H. Fanning,	Member

NATIONAL LABOR RELATIONS BOARD

((SEAL)

[5]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

APPENDIX

NOTICE TO ALL MEMBERS OF COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 4372, AND TO ALL EMPLOYEES OF OHIO CONSOLIDATED TELEPHONE COMPANY

Pursuant to

A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act as amended, we hereby notify you that:

We Will Not in any manner restrain or coerce employees of Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

Communications Workers of America, AFL-CIO
(Labor Organization)

Dated_____ By_____
(Representative) Title

Local 4372, Communications Workers of America, AFL-CIO
(Labor Organization)

Dated_____ By_____
(Representative) Title

This notice must remain posted for sixty days from the date hereof, and must not be altered, defaced, or covered by any other material.

FILED
OCT 16 1959
JAMES R. BROWNING, Clerk

No. 418

In the Supreme Court of the United States

OCTOBER TERM, 1959

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO AND LOCAL NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
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STUART ROTHMAN,
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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
A. The Board's findings and conclusions	2
B. The Board's order	6
C. The decision of the Court of Appeals	7
Argument	7
Conclusion	9

CITATIONS

Cases:

Federal Trade Commission v. *Mandel Bros., Inc.*, 359 U.S. 385	7, 8, 9
Jacob Siegel Co. v. *Federal Trade Commission*, 327 U.S. 608	7, 8
National Labor Relations Board v. *Express Publishing Co.*, 312 U.S. 426	7
National Labor Relations Board v. *Local 926, International Union of Operating Engineers, AFL-CIO*, 267 F. 2d 418	9

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*)	
Section 7	7
Section 8(b)(1)(A)	2, 6

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO AND LOCAL NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 40a)[1] is reported at 266 F. 2d 823. The Board's Decision and Order (Pet. App. 41a) are reported at 120 NLRB 684.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1959 (Pet. App. 40a), and a peti-

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[1] "Pet. App." refers to petitioners' appendices filed in this Court.

tion for rehearing was denied on June 26, 1959 (Pet. App. 40a). The petition for a writ of certiorari was filed on September 22, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board, in ordering petitioners to cease and desist from coercing and restraining not only the employees of the Ohio Consolidated Telephone Company, but employees of any other employer in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act, acted within its allowable discretion to select an appropriate remedy.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth in petitioners' appendices (Pet. App. 1a-5a).

STATEMENT

A. *The Board's findings and conclusions.*—The Board found that petitioners (a national labor union and its affiliated local), in violation of Section 8 (b)(1)(A) of the Act, engaged in coercive conduct, violence, threats and misconduct during the course of a strike against the Ohio Consolidated Telephone Company ("Company"), and thereby restrained and coerced employees in the exercise of their right to refrain from or discontinue participation in the strike. The subsidiary facts upon which the Board based its findings are summarized below.

Negotiations between Communications Workers of America ("CWA"), its Local No. 4372 and the Company for a new contract having been unsuccessful, Company employees went on strike on July 14, 1956, when the old contract expired (B.A. 6a; 86a-87a).[2] The Company continued to operate with the assistance of its clerical and professional employees and of personnel who normally perform supervisory functions for the Company or for affiliated corporations, but who performed the work of rank and file employees during the strike (B.A. 80a; 98a-100a, 111a, 113a-114a, 123a, 127a, 137a-138a, 142a-143a, 163a-167a, 170a-172a, 176a-177a, 188a, 194a, 209a, 214a). During the course of the strike the unions engaged in many incidents of coercive conduct, violence and threats designed to impede the Company's operations and to intimidate the personnel engaged in such operations.

On July 18, 1956, strikers followed District Manager Matz and Foreman Kerns who were riding in a Company truck to Matz's home (B.A. 16a, 78a; 148a, 165a) and gathered in a group near Matz's house. Matz was warned to stay in his house and he did not return to the Company telephone exchange until police arrived on the scene (B.A. 149a-150a, 165a). The following day strikers blocked the exit gate to the Company parking lot and prevented the egress of the same Company personnel until police arrived about 30 minutes later (B.A. 17a, 78a; 145a-148a). Strikers at the time also made threats to

[2] "B.A." refers to the Board Appendix filed with the court below.

Supervisor Beasley who was within the parking lot and was attempting to take pictures of the strikers (B.A. 17a, 78a; 147a).

On the afternoon of July 29, Supervisors Newman and Meyers escorted Patricia Bauer, who had been employed in a supervisory capacity by another telephone company, to one of the Company's exchanges which was being picketed. Pickets refused to allow Bauer to enter the Company building (B.A. 20a, 78a; 133a-139a). On the evening of the same day Company officials again attempted to escort Bauer into the exchange. Pickets walked in a "close circle" blocking the entrance to the building, and told Company personnel that no strangers like Bauer who came from out of town should go in the building (B.A. 21a-22a, 78a-79a; 101a-105a, 300a-303a, 309a-314a). Later, with police aid, Bauer was permitted to enter.

On July 30, 1956, strikers who were picketing company exchanges at New Boston and Sciotoville prevented Company personnel from entering the building to deliver supplies (B.A. 22a-23a, 79a; 127a-133a; 139a-141a, 372a-373a). Police talks with the strikers failed to gain entrance for the Company personnel. At about the same time, pickets prevented employee Maynard from entering the Sciotoville exchange until escorted in by police (B.A. 24a, 79a-80a; 114a-118a, 122a, 126a).

On August 13, Ghearing and Foster, who normally performed supervisory work for another telephone company affiliated with Ohio Telephone Consolidated, drove with District Manager Matz to a farm outside

the city limits to repair a cable (B.A. 26a, 79a, 177a). Pickets appeared and called Ghearing and Foster obscene names and told them "You fellows better get * * * out of town. * * * If you don't get out of here tonight you will be sorry. If you have any concern for your family, you will leave" (B.A. 26a-27a, 79a, 185a, 152a-153a, 178a). Several strikers followed Ghearing and Foster to a local restaurant where a much larger group of strikers subsequently appeared. Strikers made several inquiries as to whether Ghearing and Foster were leaving town (B.A. 28a, 79a; 180a, 167a-168a, 155a). When the two men left the restaurant and got into a car, the strikers and a group of unidentified persons rushed the car, rocked it and overturned it (B.A. 29a, 79a; 168a, 255a-258a, 272a-275a, 168a, 180a-181a, 356a-357, 183a-184a, 479a).

On August 22, a striker threatened a Company repairman with violence for taking photographs (B.A. 31a, 79a; 318a, 190a-193a, 243a-244a, 285a-286a, 334a, 315a, 349a-350a). On the following day, strikers appeared where a number of Company supervisors were making repairs. One striker was heard to remark that he "was going to get a little blood and hair" on the pick handle he was carrying (B.A. 34a, 79a, 282a, 208a-209a, 385a-386a). The next day, strikers followed Company men to a rural area and made insulting remarks to the workmen and called them vile names (B.A. 79a; 160a).

On September 18, strikers picketed Company personnel making repairs. A fight between the Company men and the strikers ensued (B.A. 45a, 79a,

259a-260a). Eventually, the strikers, outnumbering the Company personnel, forced all the Company men to retreat from the scene in their trucks (B.A. 45a, 79a, 261a, 342a). Several Company men received treatment at the local hospital (B.A. 219a, 225a).

During the course of the strike, petitioner CWA supported the activities of its local, paying strike benefits to strikers, providing bail for strikers jailed for misconduct and continuing publicly to espouse the strikers' cause (B.A. 195a-198a, 204a-205a, 212a-213a, 486-492a).

Employees were well aware of the dangers to which anyone seeking to work during the strike might be subjected. The events summarized above were publicized in the local newspapers, over the radio, and in a national magazine article, reproductions of which the Company sent to its subscribers to explain why they were not getting service (B.A. 13a-14a; 183a-185a, 226a-203a, 174a-176a, 237a-240a, 329a, 475a-485a, 499a-535a). Moreover, these events were described by witnesses in local court proceedings attended by a number of employees (B.A. 14a-15a; 154a-155a, 157a-158a, 183a, 190a, 222a-224a).

Upon the basis of the foregoing facts, the Board concluded that petitioners' misconduct restrained and coerced employees in the exercise of their statutory right to refrain from or discontinue participation in the strike, and, therefore, violated Section 8(b)(1)(A) of the Act.

B. *The Board's Order.*—The Board's order (Pet. App. 41a) requires petitioner unions to cease and

desist "from in any manner restraining or coercing employees of the Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act," and to post appropriate notices.

C. *The decision of the Court of Appeals.*—The Court of Appeals, in a *per curiam* opinion (Pet. App. 40a), affirmed the Board's findings as adequately supported by the record. It enforced the Board's order, after deleting the words "in any manner."

ARGUMENT

Petitioners' sole contention is that the Board's order as enforced is too broad because it requires them to cease and desist from restraining and coercing not only employees of the Company, but also employees of any other employer, in the exercise of the rights guaranteed in Section 7 of the Act. It is settled, however, that the Board may fashion its order to enjoin not only the particular unfair labor practice found but also like or related acts which may be anticipated from the wrongdoer's past misconduct. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 436. The scope of such orders "depends on the facts of each case and a judgment as to the extent to which a particular violator should be fenced in," and a reviewing court "sit[s] only to determine if the trier of facts has exercised an allowable discretion." *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385, 392-393; see *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611-613.

Accordingly, the Court of Appeals' ruling on the narrow issue here presented—whether "on the facts of [this] case" (*Mandel, supra*) the Board made "an allowable judgment" (*Siegel, supra*, p. 612) "as to the extent to which a particular violator should be fenced in" (*Mandel, supra*)—does not require further review by this Court. The Board found that petitioners participated in coercive conduct involving threats or violence on at least twelve separate occasions during a three-month period. The coercion was exerted not only against Company personnel but also against personnel from affiliated corporations who were assigned to assist in the Company's operation during the strike. Petitioners' misconduct was widely publicized. Although petitioner Local Union No. 4372 represents only the employees of the Company in the Portsmouth, Ohio area, its parent union (petitioner CWA) is a national organization and deals with employers throughout the country. As stated above, CWA supported the unlawful activities of Local Union No. 4372 and it was not unreasonable for the Board to anticipate that, unless restrained, CWA might extend similar support to other affiliated locals in disputes with other employers. Taking into account the illegal acts directed against the personnel of the related companies which came to the assistance of the Company and the extensive dealings of CWA with other employers, the Board could properly conclude that an appropriate order should protect not only the employees of the Company but also those of other employers.

Contrary to petitioners' contention (Pet. 17-20), the decision below is not in conflict with *National Labor Relations Board* v. *Local 926, International Union of Operating Engineers, AFL-CIO*, 267 F. 2d 418 (C.A. 5). The different results in the two cases do not involve any conflict in principle; they merely reflect the different "facts of each case and a judgment as to the extent to which a particular violator should be fenced in." *Mandel Bros., supra*, at 392.[3]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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National Labor Relations Board.

OCTOBER 1959.

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[3] Petitioners complain (Pet. 15-17) that the Board's brief in the Court of Appeals referred to certain stipulations pursuant to which other cases were settled, as a basis for supporting the order. The Board itself did not rely upon these stipulations in its decision, and there is nothing in the opinion of the court below to suggest that the latter relied on them either.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF ON BEHALF OF PETITIONERS

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	1-2
QUESTIONS PRESENTED	2-3
STATUTE INVOLVED	3
STATEMENT	3-12
SUMMARY OF ARGUMENT	13-17
ARGUMENT	18-38
I. There was no Pleading, Allegation, Evidence or Finding in the Record to Sustain the Extension of the Board's Order to Cover the Employees of "Any Other Employer" Than the Primary Employer	18
II. The Decree of the Court of Appeals is Contrary to Controlling Precedent Established in Decisions of this Court and Heretofore Uniformly Followed by the Courts of Appeal	22
III. Compromise Settlements of Unfair Labor Practice Cases, and Orders of the Board Based Thereon Which Make No Findings That the Act Has Been Violated, Cannot be Used as the Basis of Future Prejudicial Conclusions in Other Cases, Such being Contrary to Public Policy Which Favors Compromise Settlements of Disputed Claims	28
IV. The Words "Or Any Other Employer" In The Board's Order as Enforced by the Court, Without Any Geographic Limitation and Without any Expression in the Court's Decree Delimiting the Effect of its Injunction, Constitute the Court of Appeals a Court of First Instance for the Trial of Unfair Labor Practices	32
CONCLUSION	39

APPENDICES (IN A SEPARATE VOLUME)

APPENDIX A—Pertinent Statutes	1a
APPENDIX B—Excerpt from Brief of Counsel for Labor Board in Court Below	6a

Appendices (Continued)

Page

APPENDIX C—Excerpt from Respondents' (Petitioners here) Brief in Court Below 10a

APPENDIX D—Full Text of Unreported Settlement Stipulation and Board Order in Indiana Bell Telephone Company Case 12a

APPENDIX E—Full Text of Unreported Settlement Stipulation and Board Order in Southern Bell Telephone Company Case 23a

APPENDIX F—Opinion, and Order Denying Rehearing, in Court Below 40a

APPENDIX G—Decision and Order of NLRB 41a

TABLE OF AUTHORITIES CITED

Court Cases

Central States Drivers Council v. National Labor Relations Board, 267 F. 2d 163, (CA-D.C., 1959) 39

Cone Brothers Contracting Company v. National Labor Relations Board, 235 F. 2d 37 (CA-5, 1956) 25

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers, Local 554, AFL-CIO v. National Labor Relations Board, 262 F. 2d 456 (CA-D.C., 1958) 24, 27, 32, 34

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Highway Drivers Local 107 v. National Labor Relations Board, ... F. 2d ....., 45 LRRM 2319 (CA-D.C., Dec. 23, 1959) 24-25, 27

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Truck Drivers Local Union 728 v. National Labor Relations Board, 265 F. 2d 439 (CA-5, 1959) 25, 27, 32

Court Cases (Continued)

Page

International Union of Operating Engineers, Local 150, AFL-CIO v. National Labor Relatoins Board, ... F. 2d ....., 45 LRRM 2324 (CA-D.C., Dec. 30, 1959) 25, 27

May Department Stores Company v. National Labor Relations Board, 326 U.S. 376, 66 S. Ct. 203 ..... 14, 23, 34

Morrison-Knudsen, Inc. v. National Labor Relations Board, 270 F. 2d 864, (CA-9, 1959) 25, 34

National Labor Relations Board v. Armco Drainage & Metal Products, 220 F. 2d 573 (CA-6, 1955) 25

National Labor Relations Board v. Cleveland-Cliffs Iron Company, 133 F. 2d 295 (CA-6, 1943) 24, 32

National Labor Relations Board v. Dallas General Drivers, etc., Local 745, 228 F. 2d 702 (CA-5, 1956) 32

National Labor Relations Board v. Express Publishing Company, 312 U. S. 426, 61 S. Ct. 693 ..... 14, 22, 32, 34

National Labor Relations Board v. Ford Motor Company, 119 F. 2d 326 (CA-5, 1941) 32

National Labor Relations Board v. Indiana and Michigan Electric Company, 318 U. S. 9, 63 S. Ct. 394 7

National Labor Relations Board v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 135, 267 F. 2d 870 (CA-7, 1959) 27

National Labor Relations Board v. Local 369, International Hodcarriers, Building and Common Laborers Union of America, 240 F. 2d 539 (CA-3, 1957) 24, 27

National Labor Relations Board v. Local 926, International Union of Operating Engineers, AFL-CIO, 267 F. 2d 418 (CA-5, 1959) 15, 25, 27, 30, 32

National Labor Relations Board v. McGraw & Co., 206 F. 2d 635 (CA-6, 1953) 26

Court Cases (Continued)

Page

National Labor Relations Board v. Nashua Manufacturing Corporation, 218 F. 2d 886 (CA-5, 1955) 25

National Labor Relations Board v. Springfield Building and Construction Trades Council, 262 F. 2d 494 (CA-1, 1958) 27

News Printing Company v. National Labor Relations Board, 231 F. 2d 767 (CA-D.C., 1956) 25

Republic Fire Ins. Co. of North America v. Weides, 81 U. S. 375, 14 Wall. 375, 20 L. ed. 894 ..... 15, 28

St. Louis Mining & Mfg. Co. v. Montana Mining Co., 171 U. S. 650, 19 S.Ct. 61, 43 L. ed. 320 ..... 15, 28

San Diego Building Trades Council v. Garmon, 359 U. S. 236 34

Williams v. First National Bank, 216 U. S. 582, 30 S. Ct. 441 ..... 15, 28

National Labor Relations Board Cases

Bitner Fuel Co., 92 NLRB 952, enf'd. 190 F. 2d 251 (CA-4) 14

Endicott Church Furniture, Inc., 125 NLRB #81 ..... 15, 29

Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company), 115 NLRB 1123 14

Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company, 116 NLRB 842 26

Local 140, United Furniture Workers of America, CIO (Brooklyn Spring Corporation, 113 NLRB 815, enf'd. 233 F. 2d 539 (CA-2) 26

Puerto Rican Rayon Mills, Inc. 117 NLRB 1355 ..... 15, 28-29

United Mine Workers of America, District 31, (L.E. Cleghorn), 95 NLRB 546, enf'd. 198 F. 2d 389 (CA-4) cert. den. 344 U. S. 884 26

National Labor Relations Board Cases (Continued)

Page

United Mine Workers of America, District 2, (Mercury Mining and Construction Corporation), 96 NLRB 1389, enf'd. 202 F. 2d 177 (CA-6) 26

United Mine Workers of America (West Kentucky Coal Company), 93 NLRB 916, enf'd. 195 F. 2d 961 (CA-6), cert. den. 314 U.S. 920 26

Statutes

28 USC, Sec. 1254(1)

National Labor Relations Act, as amended (61 Stat. 136, 29 USC, Supp. V. Sec. 151, et seq): 3

Sec. 2 (3) 13

Sec. 7 ..... 8, 9, 14, 17,20, 21, 22, 23, 33, 34

Sec. 8 (b) (1) (A) 7, 20, 25, 34

Sec. 8 (b) (4) (A) 25

Sec. 10 (c) 22, 31

Sec. 10 (e) 2, 22

Miscellaneous

Administrative Rulings of National Labor Relations Board General Counsel, Case #S-739, November 27, 1958, 43 LRRM 1237 ..... 16, 36

In re Communications Workers of America (Indiana Bell Telephone and Telegraph Company) (Separate Appendix D) 12a

In re Communications Workers of America (Southern Bell Telephone and Telegraph Company) (Separate Appendix E) 23a

Twenty-third Annual Report of the National Labor Relations Board, 1958, p. 4 29-30

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (R. 105) is reported at 266 F. 2d 823. The Order denying Petitioners' Motion for Reconsideration and Rehearing (R. 113) has not yet been reported. The Decision and Order of the National Labor Relations Board (R. 65) is reported at 120 NLRB 684.[1]

JURISDICTION

The decree (R. 104) and opinion (R. 105) of the Court of Appeals were entered on May 14, 1959. Pe-

[1]References to the printed record in this Court are designated by "R". Petitioners' appendices in this Court are referred to as "App."; and references, if any, to the Board's printed appendix in the court below will be designated "B.A.". It has been stipulated between counsel that either party may make reference, if necessary, either in briefs or oral argument to portions of the record which have not been included in the printed record.

titioners' (Respondents below) Motion for Reconsideration and Rehearing (R. 106) requesting further modification of the Board's order, or, in the alternative, clarification *of the effect of the Court's decree*, was denied on June 26, 1959 (R. 113).

The petition for a Writ of Certiorari was filed on September 22, 1959. The petition was granted and the case was transferred to the summary calendar on November 16, 1959 (R. 113).

The jurisdiction of this Court rests upon 28 U.S.C. 1254 (1) and Section 10(e) of the National Labor Relations Act, as amended. (29 U.S.C., Supp. V., Sec. 160(e); NLRA, Sec. 10(e), App. A, separate volume, p. 3a).

QUESTIONS PRESENTED

1. Is not a Labor Board Order too broad, which enjoins Respondents from restraining or coercing employees of the primary employer "or any other employer", when there is no pleading, allegation, evidence, or finding in the record that employees of any employer, other than the primary employer, were or could have been restrained by the conduct of the strikers?

2. Was it not error for the Court of Appeals to enforce a Labor Board Order which enjoins a parent national union and one of its 730 local unions from restraining and coercing employees of a primary employer or "any other employer" where there was no pleading, allegation, evidence or finding in the record to support extending the scope of the order to employees of "any other employer"; and where the alleged justification of the scope of the order consisted only of compromise settlements, containing no admission

of guilt, in two other isolated cases; and where such compromise settlements were injected into the case for the first time in the brief of the Board's General Counsel filed with the Court of Appeals to support its petition for enforcement?

3. Is not a Labor Board Order, enforced by the Court of Appeals, which enjoins a national labor union, operating from coast-to-coast with collective bargaining agreements with some 100 different employers, and one of its 730 locals from restraining or coercing employees of a primary employer "or any other employer" so broad in scope as to make the Court of Appeals, in possible future contempt proceedings, a court of first instance for the trial of other unrelated unfair labor practices in geographical areas outside of its jurisdiction?

4. Was it not error for the Court of Appeals to refuse to strike the words "or any other employer" from Paragraph 1 of the Labor Board Order, or, in the alternative, to issue a definitive construction of its decree, delimiting the breadth of effect which the Court intended its decree to have in the future?

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V., Sec. 151, et seq.) are set forth in Appendix A in separate volume, Petitioners' Appendices.

STATEMENT

The petitioner, Communications Workers of America, is a national labor organization, affiliated with the AFL-CIO, having approximately 260,000 members and 730 local unions throughout the United States and Canada. It is the collective bargaining representative

of the employees of approximately 100 employers from coast-to-coast, and has one or more collective bargaining agreements in effect with each. In addition, it conducts constant organizational campaigns among the employees of other employers. These contracts and organizational campaigns are administered through 9 geographical administrative districts, 4 nationwide administrative directors, and the local unions.[2]

In 1956 the Communications Workers of America had been recognized as the exclusive bargaining representative of the legally eligible non-supervisory employees of Ohio Consolidated Telephone Company for fourteen years (R. 72, 73).

The employees of the Company hold their membership in, and are directly represented in collective bargaining matters by, three CWA local unions — Local 4372, Local 4373, and Local 4374. The petitioner, Local 4372, has as its geographical area of jurisdiction, and has as its members, those non-supervisory employees of Ohio Consolidated Telephone Company working in the Portsmouth, Ohio, and contiguous operations of Ohio Consolidated (R. 73).

By letter dated May 11, 1956, Ohio Consolidated, by its Vice-President, R. N. Cole, notified J. A. Beirne, President of CWA, of its intent to terminate the existing collective bargaining agreement at its expiration on July 14, 1956. (R. 73; G.C.X. 4-A, R. 100, introduced, R. 72).

CWA President Beirne, by letter dated May 14, 1956, gave Ohio Consolidated counter-notice of termi-

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[2]The Constitution of CWA, Articles IV; V; IX, Section 2; XI; XIII; and Appendix A (fly leaf map) to such Constitution, which reveal the facts stated above, are in the Board's record as GCX3 (introduced in evidence, R. 72); but are not physically included in the printed record.

nation and requested negotiations for a new agreement containing named modifications. (R. 73; G.C.X. 4-B, R. 101, introduced, R. 72).

The bargaining committees of the Company and of its employees' representatives were unable to reach agreement on a new contract by the July 14 expiration date; and on July 15, 1956, the employees represented by CWA and its three local unions went on strike (R. 74).

Although the members of all three of the above named local unions went on strike at Ohio Consolidated on July 15, 1956, and their representatives participated in contract negotiations with Ohio Consolidated (R. 73), only Local 4372, of the three local unions, was a respondent before the Labor Board. No charges were filed against the other two CWA local unions (R. 80, 82); and there was no evidence or finding that members of the other two local unions participated in any of the untoward conduct alleged in the Board's complaint (R. 84, 99) or shown in evidence.

Ohio Consolidated Telephone Company is a wholly owned subsidiary operating company of the General Telephone Company (G.C.X. 31, R. 104), which operates a nationwide telephone system similar to that of the American Telephone and Telegraph Company (R. 76). General Telephone Company of Ohio, General Telephone Company of Indiana, General Telephone Company of Illinois (R. 76), General Telephone Company of Pennsylvania, General Telephone Company of West Virginia and General Telephone Company of the Southwest (R. 79) are all sister subsidiary operating companies to Ohio Consolidated, and all are part of the "General System" of companies (R. 76).

General Telephone of Ohio and Ohio Consolidated have some top managerial officials in common,[3] and throughout the strike supervisory employees of General Telephone of Ohio and other subsidiary companies of the General System were loaned to, and performed work for, Ohio Consolidated during the strike.[4] They were under the direction of Ohio Consolidated in the performance of these services; and the operating companies who loaned them to Ohio Consolidated billed Ohio Consolidated for their wages and salaries (R. 75).

These supervisory employees of General performed work for Ohio Consolidated normally done by the employees on strike. The only other employees who worked during the strike were Ohio Consolidated's supervisory force, several confidential secretaries to management officials who were not eligible for union representation, and one female employee who abandoned the strike and returned to work without interference or molestation from her fellow workers. They also performed some work normally done by strikers. None of these employees was deterred from continuing work by conduct of strikers. (R. 142; B.A. 114a, 115a; I.R., R. 59-64).

The Trial Examiner considered 27 specific incidents of misconduct alleged in the Board's complaint to have been committed by striking members of Local 4372 during the strike which lasted in excess of six months. The Board approved all of the Trial Examiner's find-

[3]For instance, Mr. Dick Zachman who is Public Relations Director for both of the sister companies. (I.R., R. 16; R. 75).

[4]The Intermediate Report names the following supervisory employees of General Telephone of Ohio who worked for Ohio Consolidated during the strike: District Plant Supt. Casteel; Plant Engineer Stratton; Chief Operator Pat Bauer; Construction Supervisors Ghearing, Foster and Seward; and Supervisor Wemple. In addition, other supervisors of the General System were working. (I.R., R. 35, 50. See also R. 74-79).

ings of fact, but reversed his conclusion that no unfair labor practices had been committed. The Board concluded that ten instances of misconduct by striking employees directed against supervisors, one instance of misconduct directed against the confidential secretary to the Vice-President of Ohio Consolidated, and portions of three instances of misconduct directed against supervisors, which were enmeshed with coercive misconduct on the part of the supervisors themselves, were violative of Section 8(b)(1)(A) of the Act, because such acts "tended" to restrain and coerce employees who may have heard of such misconduct.[5] (Board's Decision, Par. 1 and 2, R. 65-67).

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[5]Other conclusions of the Trial Examiner and rulings of the Board were as follows:

(1) He found that Company supervisors provoked all of the misconduct in seven instances and provoked part of the misconduct in three other instances; that the Company condoned and ratified the first act of threatened violence during the strike, which act was committed *against strikers* by employees of independent contractors (no violence by strikers against employees of independent contractors was shown in evidence); and that the District Plant Superintendent of General Telephone of Ohio, who was working for Ohio Consolidated, committed the first act of actual violence during the strike when he pushed a striker down an alley with an Ohio Consolidated truck, resulting in a "compressed vertebra" and other injuries to the striker. These findings were approved by the Board. (R. 13, 14, 25, 65).

(2) The Trial Examiner further found that President Williams and General Counsel Griffith of Ohio Consolidated employed private investigators to come to Portsmouth; that Public Relations Director Zachman (for both Ohio Consolidated and General Telephone of Ohio), Industrial Relations Director Lennberg, and either General Plant Manager Pratt or Division Manager Kimball *instructed* the investigators *"to remove four of the strike leaders from further strike activity in any manner they saw fit—by running them down with an automobile if necessary;"* that photographs of the four strikers were displayed to the investigators; that the investigators were discharged, in part, because they had not gotten the four strike leaders out of the picture; and that on the occasion of the discharge Division Manager Kimball stated to the investigators that, had they gotten the four strike leaders out of the picture, "the negotiations and the strike and everything would be disintegrated entirely." These findings of fact were tacitly approved by the Board. (Emphasis supplied). (R. 15-18, 68).

(3) Relying upon the decision of this Court in *NLRB v. Indiana & Michigan Electric Co.*, 318 U. S. 9, 18, 19, the Trial Examiner concluded that the foregoing facts were relevant and should be considered as to whether Ohio Consolidated had established a policy pattern of violence (R. 13) and had conspired to engage in illegal conduct which

Thus, the improper conduct found by the Board was limited to violence and threats of violence by strikers against persons working for Ohio Consolidated; and the only employees who were, or could have been, restrained or coerced in their Section 7 rights — that is, their right to work for Ohio Consolidated during the strike — were those employees who were working or may have desired to work. No evidence was introduced tending to show that employees of other employers, or the right to work for other employers, could have been affected.

Local 4372 was held responsible for these acts because its officers and members participated in them. Communications Workers of America was held responsible only derivatively because it approved and financially supported the strike of Local 4372 (R. 12, 59). There was no evidence that CWA or any of its officers instigated or approved any improper acts other than by the continuance of financial support to the strike and by the failure publicly to repudiate the strikers engaging in such conduct.

Upon these findings and conclusions, the Board's Order provided in Paragraph 1 that both CWA and Local 4372 "and their respective officers, representatives, agents and assigns:

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constituted an abuse of the Board's processes. (R. 18, 19). Upon the consideration of such facts, the Trial Examiner concluded that Ohio Consolidated had displayed contempt for the rights of its own employees and had abused the processes of the Board by threatening its employees with physical violence, by hiring investigators to engage in violence, and by engaging in actual violence against striking employees. (R. 64, 65).

While the Board apparently agreed with the conclusion that Ohio Consolidated restrained and coerced its employees by this conduct (Board's Decision, Par. No. 2, R. 68), it held that such evidence and findings were irrelevant and refused to consider their legal effect. (Board's Decision, Par. No. 3, R. 69).

> "1. Cease and desist from *in any manner* restraining or coercing employees of Ohio Consolidated Telephone Company *or any other employer* in the exercise of the rights guaranteed in Section 7 of the Act." (Emphasis supplied).

There was no pleading, allegation, evidence or finding in the record that employees of "any other employer" than Ohio Consolidated were, or could have been, restrained or coerced in their Section 7 rights; nor was there any pleading, allegation, evidence or finding that such restraint or coercion had been accomplished "in any manner" other than by acts and threats of violence on the part of striking members of Local 4372. Neither was there any pleading, allegation, evidence or finding that CWA had engaged in like or similar misconduct in other instances in the past or that CWA planned, or was engaged in a program, to extend such practices to employees of any other employer.

To avoid the expense of litigation, Petitioners (Respondents below) proposed to the Board that they would agree to a consent decree of enforcement if the words "in any manner" and "or any other employer" were stricken so that the Order would be restricted to the allegations, evidence and findings in the case. This proposal was declined and Petitioners resisted enforcement unless such modifications were made by the Court of Appeals.

In an effort to supply the deficiencies in the record, Counsel for the Labor Board, in their brief, alluded to two previous *unreported* orders of the Board, *based upon compromise settlement agreements* made between CWA and others of its affiliated local unions, the Labor Board, and Indiana Bell Telephone Company in

one case and Southern Bell Telephone Company in the other.

Local 4372 was not a party to either of the previous cases. *These unreported orders* of the Board *were not in evidence* and *the Board made no reference to them in its decision or order;* but it was contended that the Board could have relied upon such previous determinations and could have concluded that *both* Respondents below were in "general opposition to the purposes of the Act."[6]

Counsel for the Board in alluding to these previous unreported orders did not report to the Court that they were based upon *compromise* settlement stipulations, containing no admissions of prejudicial facts, and that, consequently, the orders of the Board, based upon the compromise settlements, contained no findings of fact that CWA or any other party to the compromises had violated the Act.[7]

As a result, Petitioners were forced to print as Appendices to their brief in the Court of Appeals the entire compromise settlement stipulations and orders of the Board in both the Indiana Bell and Southern Bell cases, in order to demonstrate to the Court of Appeals that no prejudicial conclusions could be based upon these matters, not of record, because they were, themselves, based upon privileged agreements and be-

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[6]The portions of the General Counsel's brief, filed on behalf of the Board, which inject the compromise settlements into the case *for the first time* and contain argument based thereon, are reprinted as Petitioners' Appendix B at page 6a in a separate booklet of appendices.

[7]Paragraph 8 of both the Indiana Bell and Southern Bell Compromise Settlement Stipulations contains the following express provision:

> "it is understood that the signing of this stipulation by Respondents does not constitute an admission by them that they have violated the Act." (App. 15a, 29a).

Accordingly, the Board made no finding of fact in either of the cases that the Respondents had violated the Act. (App. 19a, 35a).

cause they, themselves, made no prejudicial findings of fact that the Act had been violated. (Portions of Petitioners' Brief in the Court of Appeals, substantiating the foregoing, are reprinted as Petitioners' Appendix at page 10a in a separate volume. The Indiana Bell and Southern Bell Compromise Settlements and Board Orders are also reprinted in full as Appendices D and E in the separate volume at pages 12a, 18a, 23a, and 33a, respectively.)

Such was to no avail, however, for the Court of Appeals, after modifying Paragraph 1 of the Board's Order by striking the words "in any manner," enforced the words "or any other employer" (R. 104).

As aforesaid, there was no pleading, allegation, evidence or finding *in the record* upon which enforcement of the language "or any other employer" could be based. Therefore, while the summary opinion of the Court of Appeals does not indicate what substantive considerations the Court entertained,[8] it must necessarily have based this portion of its opinion and decree upon prejudicial conclusions drawn from these privileged, compromise settlements, which were not of record in the case, and upon the orders of the Board based upon them (which, however, had made no findings of fact that either of Petitioners had previously been responsible for violations of the Act).

By Motion for Reconsideration and Rehearing (R. 106) Petitioners again requested the Court of Appeals to delete the language "or any other employer" from the Board's Order, as enforced; or, in the alternative, that the Court issue a definitive ruling that its Decree

[8]The opinion does indicate, however, that the Court considered the briefs of the parties which contained this material, even though it was not in the record. (R. 105).

would not be construed in the future to apply to employees of employers other than those within the geographical area covered by the operations of Local 4372.

The Motion was denied on June 26, 1959, without clarification of the effect and scope which would be placed upon the Decree in possible future contempt proceedings (R. 113).

SUMMARY OF ARGUMENT

I

Contentions of the Board in the Court below that the broad language "or any other employer" was authorized (1) because supervisory employees of affiliated companies were "employees" of other employers within the meaning of Section 2(3) of the Act by virtue of the performance of non-supervisory work during the strike, and (2) because employees of other employers may have heard of the strikers' misconduct through the media of press and radio and were "put on notice that respondents were prepared to further their cause by unlawful acts" are without merit.

(1) The supervisory employees of sister companies of the "General System" were chosen to perform work normally done by strikers because they were *in fact* supervisors and, as such, could be depended upon to do the work of strikers. They were working under the direction and control of Ohio Consolidated, on Ohio Consolidated work, and at Ohio Consolidated expense, together with the regular supervisory employees of Ohio Consolidated. Under these circumstances, they were employees of Ohio Consolidated and of no other employer and they maintained their status as supervisory employees, as was recognized by the Board's General Counsel in the complaint.

(2) All of the acts of misconduct alleged, shown in evidence and found by the Board were directed toward supervisory employees of Ohio Consolidated while working on Ohio Consolidated work. We have not in this case challenged the dubious conclusion that such acts coming to the attention of strikers and non-striking "employees" of Ohio Consolidated may have

"tended" to restrain or coerce such employees in their Section 7 right of freedom of choice as to whether they should strike or discontinue striking. However, it was not shown that the employees of any other employer were requested to work for Ohio Consolidated, or that they had any right to work for Ohio Consolidated. The strike did not involve any other employer and the strike activity was not directed at the employees of any other employer. Under these circumstances the Section 7 rights of employees of other employers were not involved in the strike or the strike activity; and therefore such other employees could not have been restrained or coerced in the exercise of the Section 7 right to strike or not strike at a place of employment where no strike existed.

(3) There was therefore no evidence to show any tendency for the employees of other employers to be restrained or coerced in the exercise of their Section 7 rights and no such finding was made by the Board. Neither was there any allegation, evidence or finding in the record of a past history of similar violations by Petitioners in other cases, nor of an intention on their part to extend such violations to other employers in the future.

Consequently, there is nothing in the record to authorize or justify the extension of the Board's Order to the employees of "any other employer" than those of the primary employer.

II

Under the foregoing facts, the decisions of this Court in *NLRB v. Express Publishing Co.*, 312 U.S. 426, 434, 435, 438, and in *May Department Stores Co. v. NLRB*, 326 U.S. 376, 390, 393, and the decisions

of the circuit courts which have heretofore uniformly followed those precedents, dictate that the Court of Appeals was in error in refusing to strike the language "or any other employer" from the Board's Order as enforced.

Only by basing prejudicial conclusions upon compromise settlements containing no admissions of guilt, which were first injected into the case in the brief of Counsel for the Board in the Circuit Court and which were not in the record or mentioned by the Board in its decision, can the decree enforcing such language be sustained.

III

This court and all other courts have always held that compromise settlements of disputed issues, containing no admissions of guilt, cannot be given prejudicial effect in future litigation because such compromises are based upon valuable consideration and are favored by public policy. *Williams v. First National Bank*, 216 U.S. 582; *St. Louis Mining and Manuf. Co. v. Montana Mining Co.*, 171 U.S. 650; *Republic Fire Ins. Co. v. Weides*, 14 Wall. 375, 81 U.S. 375.

The Board has likewise heretofore held that compromise settlements of unfair labor practice cases do not constitute proof that any unlawful acts occurred or that the Act has been violated. *Puerto Rican Rayon Mills, Inc.*, 117 NLRB 1355, 1364, fn. 7; *Endicott Church Furniture*, 125 NLRB #81, fn. 2.

The case of *NLRB v. Local 926, Int. Union of Operating Engineers, AFL-CIO*, 267 F. 2d 418, 420 (CA-5, 1959) is on all-fours factually with the instant case. Petitioners feel that the considerations of public policy announced by the Fifth Circuit in that case, in

refusing to permit the Board to repudiate compromise settlements "solemnly entered into" by it and in striking the language "or any other employer" sought to be justified by such compromises, should be controlling in this case.

IV

(1) Local 4372 was not even a party to the two previous cases, the compromise settlements in which are sought to be used prejudicially against it in this case.

(2) The operations of Local 4372 are confined to the representation of the employees of only one employer — Ohio Consolidated, and to one community — Portsmouth, Ohio. The language "or any other employer" authorizes the Court of Appeals to be a labor court of first instance in contempt proceedings and to adjudicate factual questions of agency involving the responsibility of Local 4372 for the acts of other local unions in widely divergent geographical areas.

(3) Communications Workers of America is a national organization having 730 affiliated local unions and dealing with the employees of over 100 employers; but it is not an omnipotent presence with the capacity, or ability, in every instance, to control in advance local union officers and members. Here it was held responsible only derivatively because it approved a strike and provided financial support to it — not because it instigated or approved the unlawful acts. The fact that it does not approve such acts and has no general policy to condone them was recognized by the Board's General Counsel in Administrative Ruling, Case #S-739, November 27, 1958, when he found that CWA was not responsible for, but had repudiated,

such conduct. The Court's decree, however, authorizes CWA to be held in contempt upon such principles of derivative responsibility because of unrelated acts of local union officers and members anywhere in the United States, and the Court of Appeals in entertaining any such adjudication would thereby become a labor court of first instance in contempt proceedings.

(4) The broad order of the Board in this case is designed to control violence, as such, because no restraint or coercion of employees of "any other employer" in the exercise of their Section 7 rights was shown. This police function was left by Congress to the primary responsibility of the states. Such an order, enforced by court decree, threatens to make a police magistracy of the Court of Appeals.

ARGUMENT

I

THERE WAS NO PLEADING, ALLEGATION, EVIDENCE OR FINDING IN THE RECORD TO SUSTAIN THE EXTENSION OF THE BOARD'S ORDER TO COVER THE EMPLOYEES OF "ANY OTHER EMPLOYER" THAN THE PRIMARY EMPLOYER.

Before the Court of Appeals, counsel for the Board made a sophistical effort to justify the language "or any other employer" by contending (1) that the supervisory employees working for Ohio Consolidated were carried on the payroll of other companies and were performing non-supervisory work during the strike, and (2) that employees of other employers may have heard of the conduct of Ohio Consolidated's striking employees through the media of press and radio and may have thereby been restrained and coerced in some vague and unspecified manner by being "put on notice that respondents were prepared to further their cause by unlawful acts." (Board's Brief, App. B, pp. 8a, 9a, in separate volume of appendices.)

(1) From the beginning of the strike on July 15, 1956, until the time of the hearing before the Trial Examiner in January, 1957, Ohio Consolidated Telephone Company continued to operate with clerical, confidential, professional, and supervisory employees of Ohio Consolidated and supervisory employees of other affiliated operating companies of the "General System," performing the work of the rank and file employees who were on strike. (R. 74-79, 142; B.A. 114a, 115a; I.R., R. 59-64).

The supervisory employees of other affiliated operating companies were working for Ohio Consolidated, doing the work normally done by Ohio Consolidated's

striking employees, and they were working under the direction and control of the Ohio Consolidated Telephone Company. Further, the operating companies were billing Ohio Consolidated for the wages and salaries of the supervisory employees working for Ohio Consolidated; so that, in fact, Ohio Consolidated was paying the wages and salaries for the work which was being performed for it. These employees were not performing any work for, or under the direction and control of, or at the expense of, the other operating companies who loaned them to Ohio Consolidated (R. 75).

The supervisory employees of other operating companies, therefore, at the time were, in fact, employees of Ohio Consolidated Telephone Company and occupied identically the same legal status as did the regular supervisory employees of Ohio Consolidated who were performing the work of rank and file employees during the strike.

Apparently, the Board's General Counsel recognized this at the time the complaint was isued as every specific allegation of his complaint (R. 87-92, 99) is restricted to charges of interference with "supervisory employees of the Employer" in the performance of their assigned duties.

Since these persons were working under the direction and control of Ohio Consolidated, on Ohio Consolidated's work and at Ohio Consolidated's expense, the fact that they had been loaned to Ohio Consolidated and might return to their regular employer at the termination of the strike would not change their status of being employees of Ohio Consolidated at the time.

Furthermore, they were supervisory employees who are *not* "employees" under the statutory definition of that term.[9] Employers as a usual and normal matter assign non-supervisory work to supervisors during strikes, and it is significant that the *only* employees of other sister companies used by Ohio Consolidated during the strike *were* supervisory employees. It is apparent that the reason that only they were used was that they *were* in fact supervisors and could be depended upon by the General System to perform, during the strike, the work normally done by non-supervisory strikers. The emergency assignment of this work to them is entirely consistent with their supervisory status and it would not have been assigned to them had they not occupied this status.

Consequently, the performance of non-supervisory work by supervisors during the strike does not convert their supervisory status to the status of "employee" within the statutory definition, but only confirms their status as a part of management.

(2) As aforesaid, of the fourteen acts, or threats, of violence found by the Board to have been committed by strikers during the three months following the beginning of the strike, all except one incident involved supervisory personnel.[10]

The Board justifies its conclusion that Section 8 (b) (1) (A) was violated (and employees restrained or coerced in their Section 7 rights) by striker misconduct directed against supervisors upon the basis that the

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[9]See Section 2(3) of the Act (29 U.S.C., Supp. V, Sec. 152(3), App. A, p. 1a.

[10]The one exception involved Maynard, confidential secretary to Company Vice-President Cole, who was ineligible for inclusion in the bargaining unit and occupied a status very similar to that of supervisory employees.

circumstances were such that strikers probably heard of the misconduct "and thereby tended to be restrained or coerced in their own right to continue or discontinue striking as they wished." (Board's Decision, Par. #2, R. 67).

While the Board's determination that strikers may in this manner restrain or coerce themselves and fellow strikers seems to be of doubtful validity, such is not here challenged and petitioners have accepted the ruling of the Board in this regard for the purposes of this case.

However, a finding that employees of Ohio Consolidated may have heard of misconduct, directed against Ohio Consolidated supervisors performing Ohio Consolidated work, and thereby tended to be restrained or coerced in their right to continue or discontinue striking is matter distinct and different from a finding that employees of some other employer, not involved in the dispute, were restrained or coerced in their own Section 7 rights.

Section 7 protects the right of employees to engage in concerted activity for purposes of collective bargaining, or to refrain from such activity. (29 U.S.C. Supp. V., Sec. 157, App. A, p. 2a). This record does not show, either by allegation or evidence, that the Section 7 rights of the employees of any other employer were in any manner related to or affected by the labor dispute and strike at Ohio Consolidated. Therefore, the fact that employees of other employers may have heard by newspaper, radio or word of mouth, of misconduct of Ohio Consolidated strikers, directed toward Ohio Consolidated supervisors performing Ohio Consolidated work, could not in any manner restrain or coerce

them in the exercise of their own unrelated Section 7 rights in connection with their employment with other employers where no strike existed.

II

THE DECREE OF THE COURT OF APPEALS IS CONTRARY TO CONTROLLING PRECEDENT ESTABLISHED IN DECISIONS OF THIS COURT AND HERETOFORE UNIFORMLY FOLLOWED BY THE COURTS OF APPEAL

This Court has, heretofore, in several decisions had occasion to consider and define the permissible breadth and scope of cease and desist orders of the Labor Board, and enforcement decrees of the Courts of Appeals, issued pursuant to Sections 10(c) and 10(e) of the National Labor Relations Act.[11]

The basic construction which has been adhered to in all subsequent decisions, is found in *NLRB v. Express Publishing Co.*, 312 U.S. 426, 434, 435, 61 S. Ct. 693, 8 LRRM 415, where the Court said:

> "Congress has itself afforded a guide pointing to the appropriate limits of the order which the Board is to make in restraining unfair labor practices. By its definition and classification of unfair labor practices in the statute it is shown that they are not always so similar or related that the commission of one necessarily admits of an order restraining all.
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> "In view of the authority given to the Board by 10(c) carefully restricted to the restraint of such unfair labor practices as the Board has found the employer to have committed, and of the broad language of 10(e) authorizing the courts to modify the order of the Board wholly or in part, we

[11]Sections 10(c) and 10(e) are reprinted in Appendix A. See separate volume, Petitioner's Appendices, pp. 2a, 3a.

> can hardly suppose that Congress intended that the Board should make or the court should enforce orders which could not appropriately be made in judicial proceedings. * * * *In the light of these provisions we think that Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found.*" (Emphasis supplied).

In *May Department Stores Co. v. NLRB*, 326 U.S. 376, 390, 393, 66 S. Ct. 203, 17 LRRM 643, the Court quoted its *Express Publishing Company* ruling as follows:

> " 'To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past.' P. 437."

In that case the Court stated further:

> "While contempt proceedings can be instituted only by the Board and in the public interest, the possibility of contempt penalties by the court for future Labor Act violations adds sufficient additional sanction to make material the difference between enjoined and non-enjoined employer activities."

In both of these decisions the Court set aside the portion of the Board's order not supported in the evidence. In them, as in the present case, there was no evidence or finding in the record of a past course of conduct which authorized an extension of the injunction against future violations beyond the parties involved in the controversy shown in evidence.

The Amendments to the Act, subsequent to these decisions, have made no changes which alter them as precedents and they have heretofore been uniformly followed by all of the Courts of Appeals, including the Sixth Circuit.

In *NLRB v. Local 369, International Hodcarriers, Builders and Common Laborers Union of America*, 240 F. 2d 539, 39 LRRM 2377 (CA-3, 1957), the Third Circuit quoted the *Express Publishing Company* case, as follows:

> " 'So far as respondents' past conduct may be thought to have had any effect on the rights guaranteed by Section 7, such consequences would be effectively prevented by the prohibition of such an order without drawing it so broadly as to forbid all other unrelated unfair labor practices.' " (312 U.S., at p. 438).

In the recent case of *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers, Local 554, AFL-CIO v. National Labor Relations Board*, 262 F. 2d 456, 43 LRRM 2197 (CA-D.C., 1958) the Court stated:

> "But we believe it more appropriate to follow the reasoning of the Supreme Court in *Express Publishing*, that a court of appeals should not become a labor court of first instance by virtue of contempt powers. We therefore agree with the Sixth Circuit that the better view is 'that the order should not go beyond the evidence supporting the unfair labor practices alleged.' " (Quoting *NLRB v. Cleveland-Cliffs Iron Co.*, 133 F. 2d 295, 302, 12 LRRM 550 (CA-6, 1943).

And in *International Brotherhood of Teamsters, etc., Highway Drivers Local 107 v. NLRB*, ...F. 2d

....., 45 LRRM 2319 (CA-D.C., December 23, 1959), the same Court said:

> "We think the Board's order should be limited to the employees of the Virginia-Carolina Company, with respect to when it was proved the union had violated Sections 8(b)(1)(A) and 8(b)(4)(A). The words 'or any other employer' in paragraph 1(a) of the Board's order, and the words 'or by like or related conduct restraining or coercing employers doing business with Virginia-Carolina Freight Lines, Inc.' in paragraph 1(b) will be stricken from the order."

To the same effect is *International Union of Operating Engineers, Local 150, AFL-CIO, v. NLRB*, ...F. 2d....., 45 LRRM 2324 (CA-D.C., December 30, 1959).

See also:

NLRB v. Local 926, Int. Union of Operating Engineers, 267 F. 2d 418, 420, 44 LRRM 2200 (CA-5, 1959);

Morrison-Knudsen, Inc. v. NLRB, 270 F. 2d 864, 44 LRRM 2680 (CA-9, 1959);

Int. Brotherhood of Teamsters, etc., Local 728 v. NLRB 265 F. 2d 439, 43 LRRM 2813 (CA-5, 1959);

Cone Brothers Contracting Co. v. NLRB, 235 F. 2d 37, 38 LRRM 2318 (CA-5, 1956);

NLRB v. Armco Drainage & Metal Products, 220 F. 2d 573, 35 LRRM 2536 (CA-6, 1955);

News Printing Co. v. NLRB, 231 F. 2d 767, 37 LRRM 2656 (CA-D.C., 1956);

NLRB v. Nashua Mfg. Corp., 218 F. 2d 886, 35 LRRM 2371 (CA-5, 1955);

NLRB v. McGraw & Co., 206 F. 2d 635, 641, 32 LRRM 2220 (CA-6, 1953).

The Board also, until quite recently, considered itself bound by these precedents of this Court, and all Board orders, except one, which have been cited by its counsel[12] in support of the language "or any other employer" have restricted the geographical area in which the order was to be effective, to the area in which the primary actor (which here would be Local 4372) operates and in all of them (except *O. W. Burke Company*, where such was clearly implied from the facts recited) the Board made a *specific* finding that the Respondent intended to extend its coercive conduct to employees of other employers in *that* geographic area.

The one exception is the case of *Local 140, United Furniture Workers of America, CIO (Brooklyn Spring Corporation)* 113 NLRB 815, 816, enforced 233 F. 2d 539 (CA-2). It appears from the Second Circuit decision that the language "or any other employer" was not challenged on appeal. Furthermore, the *only* respondent in that case was a local union. Hence that case is not authority for the use of such language against a parent union whose operations are nationwide in scope and which may be derivatively responsible for the acts of hundreds of local unions.

In *Bitner Fuel Co.*, 92 NLRB 953, 955, enforced 190 F. 2d 251 (CA-4), the Board itself specifically held

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[12]Local 294, *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company)*, 116 NLRB 842, 846; *United Mine Workers of America, District 2, (Mercury Mining and Construction Corporation)* 96 NLRB 1389, 1392, enforced 202 F. 2d 177 (CA-6); *United Mine Workers of America, District 31 (L. E. Cleghorn)*, 95 NLRB 546, enforced 198 F. 2d 389 (CA-4, certiorari denied 344 U. S. 884; *United Mine Workers of America (West Kentucky Coal Co.)*, 93 NLRB 916, 919, enforced 195 F. 2d 961 (CA-6), certiorari denied 314 U. S. 920; *Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company)*, 115 NLRB 1123, 1125.

that such broad orders would be issued only where "the record clearly indicated that the respondent * * * was engaged in a planned program to apply the same technique to all" other employers "within its jurisdiction."

More recently, however, there is much evidence that the Board has abandoned the policy of making its orders conform in scope to the pleadings, evidence and *adjudicated* history, and is now following the policy of making all orders, at least those against unions, broad and general in their coverage.[13] The courts, however, have continued to follow the precedents established by this Court and have restricted the scope of Board orders to the pleadings and evidence in the case[14] or to historical patterns of unlawful conduct *expressly* found by the Board upon the basis of *adjudicated* cases, repetition of which is specifically found to be threatened.[15]

In this case, unless the unreported orders of the Board in the Indiana Bell and Southern Bell cases[16] (which were not put in evidence and to which the Board made no reference in its decision and order), are to be considered, there is no justification for a departure from the unbroken line of precedent in this

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[13]*E.g.: International Union of Operating Engineers, Local 150, AFL-CIO, v. NLRB,* _____ F.2d _____ (CA-DC, December 30, 1959), *supra; Int. Brotherhood of Teamsters, etc., Local 107 v. NLRB,* _____ F.2d _____ (CA-DC, December 23, 1959), *supra; NLRB v. Local 926, Int. Union of Opr. Engineers,* 267 F.2d 418 (CA-5, 1959), *supra; Int. Bro. of Teamsters, etc., Local 728 v. NLRB,* 265 F.2d 439 (CA-5, 1959), *supra; Int. Bro. of Teamsters, etc., Local 554 v. NLRB,* 262 F.2d 456 (CA-DC, 1958), *supra; NLRB v. Local 369, Int. Hodcarriers, Builders, etc. Union,* 240 F.2d 539 (CA-3, 1957), *supra.*

[14]See cases in footnote 13, *supra.*

[15]*E.g.: NLRB v. Int. Bro. of Teamsters, etc., Local 135,* 267 F.2d 870, 44 LRRM 2291 (CA-7, 1959); *NLRB v. Springfield Building and Construction Trades Council,* 262 F.2d 494, 43 LRRM 2320 (CA-1, 1958); cases cited, footnote 12, *supra.*

[16]Appendices D and E, separate volume, pp. 18a and 33a.

Court and the Courts of Appeal; and the language "or any other employer" should be stricken from the Board's order enforced by the Court of Appeals.

III

COMPROMISE SETTLEMENTS OF UNFAIR LABOR PRACTICE CASES, AND ORDERS OF THE BOARD BASED THEREON WHICH MAKE NO FINDINGS THAT THE ACT HAS BEEN VIOLATED, CANNOT BE USED AS THE BASIS OF FUTURE PREJUDICIAL CONCLUSIONS IN OTHER CASES, SUCH BEING CONTRARY TO PUBLIC POLICY WHICH FAVORS COMPROMISE SETTLEMENTS OF DISPUTED CLAIMS

One of the most basic and traditional principles of public policy inherent in our judicial system is that compromise settlements of litigation are to be encouraged, and, hence, that offers and agreements of compromise cannot be construed to be admissions or used as a basis for prejudicial conclusions in future legal proceedings. *Williams v. First National Bank*, 216 U.S. 582, 30 S. Ct. 441, 54 L.ed 625; *St. Louis Mining and Manufacturing Co. v. Montana Mining Co.*, 171 U.S. 650, 19 S.Ct. 61, 43 L. ed. 320; *Republic Fire Ins. Co. of N. A. v. Weides*, 81 U.S. 375, 14 Wall, 375, 20, L. ed. 894.

An admission of *fact* in such an offer or agreement can be the basis of a conclusion, but *the matter compromised* cannot be relied upon as the foundation for future conclusions.

This fundamental concept has been expressly recognized by the Board on at least two previous occasions.

> "The settlement agreement and a consent decree which arises from the settlement agreement do not have legal significance or probative value in

establishing that the incidents or that the violations of the Act in fact occurred." *Puerto Rican Rayon Mills, Inc.*, 117 NLRB 1355, 1364, fn. 7.

"A settlement agreement does not establish that the conduct in question occurred or that it constituted a violation of the Act." *Endicott Church Furniture, Inc.*, 125 NLRB #81, fn. 2.

The Board likewise recognized this principle in its orders in the Indiana Bell and Southern Bell cases by entering findings of fact upon the stipulations of fact made by the parties and *by its failure* to enter any findings that CWA had violated the Act. Thus it found as a matter of fact in each case that the controversy affected interstate commerce and that CWA and the affiliated locals involved were labor organizations; but it made no findings in either case on the subject matter of compromise — that is, guilt of the unfair labor practices charged.

Compromise settlements of unfair labor practice cases are based upon valuable consideration both to private parties and to the Board. *Twenty-third Annual Report of the National Labor Relations Board*, 1958, p. 4,[17] dramatically illustrates the importance to the Board and its General Counsel (and, of course, to the general public) of the ability to dispose of cases by settlement when it states:

"The General Counsel's staff in the field offices closed 6,654 unfair labor practice cases without formal action, and issued complaints in 822 cases.

"Of the 6,654 unfair labor practice cases which the field staff closed without formal action, *725, or 11 percent, were adjusted by various types of*

[17]At this writing the annual report of the Board for the fiscal year ending June 30, 1958, is the latest available annual compilation.

> *settlements;* 2,242 or 34 percent, were administratively dismissed after investigation. In the remaining 3,687 cases, or 55 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases *the withdrawals actually reflected settlement of the matter at issue between the parties.*"

Thus, it can be concluded that at least one-fourth to one-third of the entire business of the General Counsel's office was transacted and disposed of by agreement and compromise. Without the ability to close cases by settlement, hundreds of additional professional employees and millions more in dollars would be required to administer the Act annually.

Similarly, millions of dollars are saved annually by private parties through compromise and settlement of unfair labor practice cases. However, if these parties are unable to know that compromise settlements with the Board will be non-prejudicial, they will not long continue this practice.

Nothing could more effectively undermine the administration of the Act than for the courts to permit the Board and its General Counsel to breach this most basic concept of public policy and of honesty and good faith by using compromise settlements, which contain no admissions of guilt, as a basis for prejudicial conclusions in future cases.

This was recognized by the Court of Appeals for the Fifth Circuit in *NLRB v. Local 926, Int. Union of Operating Engineers, AFL-CIO,* 267 F. 2d 418, 420, 44 LRRM 2200 (May 26, 1959), the facts of which are, in substance, identical to those in the present case. In that case, as in the present one, counsel for the

Board relied upon compromise settlements to sustain a broad order which was without support in the record.

In reaching the opposite conclusion from that reached by the Sixth Circuit in this case, the Fifth Circuit expressed most appropriately the views which Petitioners regard to be legally and morally correct and which they feel should control the disposition of this case as well. For this reason, the pertinent portions of the Fifth Circuit decision are set forth, in full, in footnote 18, below.

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[18]"The Union makes two contentions. * * * Second, the Union contends that the facts in the case do not justify an order as broad as the one issued by the Board.

* * *

"II. The scope of the order is a different matter. The order, in part, requires the Union to:

"I. Cease and desist from engaging in, or inducing or encouraging the employees of any employer, other than Columbus Construction Company, to engage in, a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services where an object thereof is to force or require any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of or to cease doing business with Columbus Construction Company, *or with any other employer or person.*' (Emphasis by the Court).

"A 'broad order' was not requested in the pleadings, at the hearing, in argument, or in briefs before the Trial Examiner. The Trial Examiner recommended the usual order requiring the Union to cease and desist from inducing secondary employees to strike or to refuse to handle goods where an object is to force anyone to stop doing business with Columbus, the primary employer. The Board attempts to justify the breadth of its order on the ground that 'the Respondent has engaged in similar violations in respect to other employers in the area * * * (and) it can be reasonably expected that the Respondent will continue to commit similar violations in the future.' The alleged 'similar violations' were two Campbell Coal cases. (Footnote omitted).

"At the trial of the case, the government introduced no evidence relating to any other instances of alleged violations by the Union showing a statewide or area-wide policy of engaging in secondary boycotts. No mention was made of the Campbell Coal cases. * * * As a matter of fact no evidence was taken in those cases upon which the Board could base a determination as to whether the Union had violated the Act. The Campbell Coal cases were terminated without prejudice by a 'Settlement Stipulation' containing a provision that the Union 'does not admit it has committed the acts or has engaged in the unfair labor practices alleged in the consolidated complaint'. (Footnote omitted).

"Section 10(c) of the Act expressly authorizes the Board, upon finding an unfair labor practice, to enter an order requiring the offending

IV

THE WORDS "OR ANY OTHER EMPLOYER" IN THE BOARD'S ORDER AS ENFORCED BY THE COURT, WITHOUT ANY GEOGRAPHIC LIMITATION AND WITHOUT ANY EXPRESSION IN THE COURT'S DECREE DELIMITING THE EFFECT OF ITS INJUNCTION, CONSTITUTE THE COURT OF APPEALS A COURT OF FIRST INSTANCE FOR THE TRIAL OF UNFAIR LABOR PRACTICES.

With, or without, a consideration of the orders of the Board based upon compromise settlement in the *Indiana Bell* and *Southern Bell* cases, the words "or any other employer" constitute the Court of Appeals a court of first instance for the trial of future unrelated unfair labor practices.

(a) Local 4372 was not even a party to the Settle-

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party 'to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act.' This is broad language. But it imposes a corresponding responsibility not to issue a broad order without the record to support it.

"In this case the order is designed to protect not only the employers doing business with Columbus Construction Company but 'any other employer or person.' There is nothing in the record to justify any such broad coverage. To find support for its order, the Board must go beyond the record, to the Campbell Coal cases, and, in effect, repudiate the stipulation solemnly entered into by the Board.

"We are aware of the considerations supporting a broad grant of discretion to the Board in determining the proper remedy for a violation of the Act. We consider more important, and basic to a fair administration of the Act, the hard-won principle of Anglo-American law that a judgment or order must find adequate support in the record. An order of a court or federal agency that goes beyond the record to penalize an offender as a bad actor smacks too much of attainder to be acceptable to this Court. We are committed to a narrower view of the proper scope of orders that may furnish the basis for contempt proceedings. *NLRB v. Ford Motor Co.*, 5 Cir., 1941, 119 F.2d 326, 8 LRRM 656; *NLRB v. Dallas General Drivers, etc., Local 745*, 5 Cir., 1956, 228 F.2d 702, 37 LRRM 2356; *Truck Drivers Local Union 728 v. NLRB*, 5 Cir., April 8, 1959, 265 F.2d 439, 43 LRRM 2813. On this issue we are in general agreement with *International Brotherhood of Teamsters, etc. v. NLRB*, U. S. App. D.C. 1958, 262 F.2d 456, 43 LRRM 2198 and *National Labor Relations Board v. Cleveland-Cliffs Iron Co.*, 6 Cir., 1943, 133 F.2d 295, 12 LRRM 550. See also *NLRB v. Express Publishing Co.*, 1941, 312 U. S. 426, 61 S. Ct. 693, 85 L. Ed. 930, 8 LRRM 415.

"Accordingly, we modify the order of the Board by deleting the phrase of the first paragraph: 'or with any other employer or person.' As modified, we grant enforcement of the order." *NLRB v. Local 926, Int. Union of Operating Engineers, AFL-CIO*, 267 F.2d 418, 420, 44 LRRM 2200 (CA-5, 1959).

ment Stipulations nor a Respondent to the Order of the Board in the *Indiana Bell* and *Southern Bell* cases which the Board contended could be used against it. There was no evidence in the record in this case that any employees, other than those working for Ohio Consolidated, were, or could have been, restrained or coerced in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended. The fact that employees of other employers, not involved in the labor dispute, may have heard of improper conduct engaged in by members of Local 4372, would be immaterial unless it were shown that they were asked to perform work for Ohio Consolidated during the strike and thereby become its employees. Absent these circumstances, which do not appear in the record, the Section 7 rights of employees other than those working for Ohio Consolidated were not involved in the strike.

The operations of Petitioner Local 4372 are confined to a part of the State of Ohio and to the representation of the employees of only one employer — Ohio Consolidated. An injunction, the scope of which extends beyond the geographical area of its operations, can be construed to render Local 4372 responsible for the acts of other CWA affiliated local unions under some circumstances. The Decree of the Court, which applied to the restraint and coercion of the employees of Ohio Consolidated "or any other employer," regardless of location, invites the trial in the Court of Appeals of allegations of initial labor act violations. Thus, the Court, unless the effect of its decree is delimited by appropriate language, legally can be asked to adjudicate complicated factual questions of agency involving the alleged responsibility of Local 4372 for acts of

other CWA local unions in widely divergent geographical areas. This Court has already held in *Express Publishing Company, supra,* and *May Department Stores, supra,* that it was not the intention of Congress that the initial determination of such factual questions should be vested in the Courts of Appeal. A " 'Court of Appeals should not become a labor court of first instance by virtue of its contempt powers.' *International Brotherhood of Teamsters v. NLRB,* 262 F. 2d 456, (CA, D.C. 1958)." *Morrison Knudsen, Inc. v. NLRB,* 270 F 2d 864, 44 LRRM 2680, 2681 (CA-9, 1959).

It must also be said that the decision of the Board in this case and its contention in its brief in the Court of Appeals, that employees of other employers may have heard of such conduct and that Section 8(b)(1)(A) was thereby violated, seeks to make a mere police statute of the Act, and mere police magistracies of the Courts of Appeal if they are authorized to determine initial Labor Act violations. Congress, in enacting the Labor Act, left to the states primarily the police function of controlling violence. *San Diego Building Trades Council v. Garmon,* 359 U.S. 236, ... S. Ct. ....., 43 LRRM 2838. The Act seeks to protect the right of employees to abstain from concerted activity, that is, to work during a strike. It makes no proscription against violence, eo nomine, but only against those particular types of conduct (violence may, or may not, be the instrument) which restrain or coerce employees *in the exercise of* Section 7 rights. 25 U.S.C., Supp. V, 158(b)(1)(A); NLRA, Section 8(b)(1)(A), App. A, p. 2a.

Without evidence in this case that employees, other than those of Ohio Consolidated, were restrained or

coerced in their rights, a decree as to such employees of other employers can only be designed to control violence, or threats of violence, in vacuo, which is a police function remaining to the states.

(b) As to the Communications Workers of America, AFL-CIO, there was no pleading, allegation, evidence or finding *in this record* that violence and threats were, or are, an habitual course of conduct or normal pattern of its operations. The Board did not so find and there is no factual basis in the record for such a finding.

In an effort to supply this deficiency in the Court of Appeals, Counsel for the Board injected into their brief the *compromise* settlements in two isolated CWA labor board cases, although there is no indication that the Board considered these cases in formulating its order.

Since CWA made no admissions of guilt in those cases and since the Board made no findings or conclusions of guilt in them, a conclusion that CWA is "in general opposition to the purposes of the Act," as contended for by the Board before the Circuit Court, should not be based upon such privileged actions.

Even if the law permitted this to be done in the abstract, such would be improper under the facts shown by the Settlement Stipulations themselves. Each of the Settlement Stipulations provided a direct remedy by court enforcement if the Board found that CWA had failed to comply with the terms of its agreement. In the *Indiana* case, there has never been any contention that CWA has not fully complied with its agreement and the Board Order. In the *Southern Bell* case,

Southern Bell attempted to instigate court enforcement against CWA when one of the local unions party to the agreement breached the compromise settlement. This application of Southern Bell was adjudicated by the Board's General Counsel concurrently with his application, on behalf of the Board, for enforcement of its Order in the present case. On the motion for Court enforcement of the *Southern Bell* case, the Board's General Counsel declined to institute legal proceedings, finding:

> "At the inception of a nation-wide strike called against the company, the International Union warned its local unions against engaging in violence or other misconduct. These warnings were heeded by all local affiliates, except one whose strike activity at the company office within its jurisdiction was marked by mass picketing and other misconduct. The misconduct occurred despite the determined efforts of an International Representative to prevent it. On the complaint of the International Representative, the Local Union official responsible for the misconduct was removed from offiice at the conclusion of the strike. The strike lasted only four days and was entirely peaceful at all other company locations throughout the country." (*General Counsel's Administrative Rulings*, Case No. S-739, November 27, 1958, 43 LRRM 1237).

The findings of the Board's highest authorized agent in the above quotation are, to say the least, inconsistent with the contentions of the same agent made before the Court of Appeals in this case when he contended that misconduct of members of *one out of three* CWA local unions engaged in the Ohio Consolidated strike reflect a "general opposition to the purposes of the Act" on the part of CWA itself.

Irrespective of the inconsistency of these contentions, these circumstances are a potent signal of the dangers inherent in the broad scope of the Court's Decree and are a clear indication that it is entirely possible that the Court, in future contempt proceedings, would be asked to determine that CWA has violated the Court's decree in this case because the members of an affiliated local union in another geographical area have, possibly because of incitation by irresponsible local union officers, engaged in acts or threats of violence.

The Communications Workers of America is a nation-wide association, having approximately 260,000 individual members, approximately 730 affiliated local unions, and contractual relations with almost 100 employers. It represents and deals with the employees, not only of these employers, but also of other employers whose employees are being organized. It seems improper that CWA should have been held responsible for the acts of the members of one local union engaged in the strike against Ohio Consolidated, when the members of two other local unions engaged in the same strike were not shown to have engaged in any improper conduct. However, the Board's Order and the Court's Decree takes the position that CWA was responsible, derivatively, for the acts of the members of this local union because it approved the strike and provided financial assistance. This same legal argument of the Board (having been approved by the Court in its Decree and being carried forward into contempt proceedings) would authorize the Court of Appeals to punish CWA for a myriad of acts and circumstances differing from those in the present case and involving different employers and the members of different local

unions. CWA is not an omnipotent presence with the ability to prevent violations by 730 virtually autonomous local unions.

Congress did not intend that the Court of Appeals should try initial Labor Act violations; however, the Court's decree, presumably, without any language of limitation, covers the employees of every one of the employers with whom CWA deals, as well as all other employers in the United States, no matter where located. Under its Decree, the Court of Appeals for the Sixth Circuit, as a court of first instance, can adjudicate all of the issues of fact involved in the actions of an affiliated union in Seattle, Washington, and determine whether an unfair labor practice occurred, whether it was merely an isolated instance, and whether CWA was responsible therefor on vicarious principles.

The Act contemplates that CWA would be entitled to an initial determination of such complicated factual issues by the designated trier of the facts—the Labor Board—without being confronted, in the first instance, with the onerous prospect of being held in contempt of a Court of Appeals.

CONCLUSION

For the reasons stated, it is respectfully submitted either that the Court of Appeals should be instructed to issue a definitive decision limiting the future application of its decree to employees of employers within the geographical area of operation of Local 4372;[19] or, preferably, that the words "or any other employer" should be ordered stricken from the Board's Order as enforced by the Court of Appeals.

Respectfully submitted,

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[19] As was done in *Central States Drivers Council v. NLRB*, 267 F.2d 163, 44 LRRM 2058 (CA-D.C., 1959).

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No. 418

In the Supreme Court of the United States

OCTOBER TERM, 1959

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND LOCAL No. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Statute involved	2
Question presented	3
Statement	3
A. The Board's findings of fact	3
B. The Board's conclusion and order	14
C. The decision of the Court of Appeals	14
Summary of argument	14
Argument	17
The Board acted within its allowable discretion in ordering petitioners to refrain from coercing and restraining not only the employees of the immediate employer involved in the instant case but also the employees of any other employer in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act	17
Conclusion	26

CITATIONS

Cases:

Amalgamated Utility Workers v. *Consolidated Edison Company*, 309 U.S. 261	24
Federal Trade Commission v. *Mandel Bros.*, 359 U.S. 385	18
Federal Trade Commission v. *National Lead Co.*, 352 U.S. 419	23
International Salt Co. v. *United States*, 332 U.S. 392	22
Kansas City Power & Light Co. v. *National Labor Relations Board*, 137 F. 2d 77	24
May Department Stores Co. v. *National Labor Relations Board*, 326 U.S. 376	17, 22
McComb v. *Jacksonville Paper Co.*, 336 U.S. 187	18
National Labor Relations Board v. *Berkley Machine Works & Foundry Co.*, 189 F. 2d 904	24

543278—60——1

Cases—Continued

	Page
National Labor Relations Board v. *Express Publishing Co.*, 312 U.S. 426	17, 19
National Labor Relations Board v. *International Woodworkers of America*, 243 F. 2d 745	20
National Labor Relations Board v. *International Hod Carriers, etc. Union, Local 210*, 228 F. 2d 589	24
National Labor Relations Board v. *Local 140, United Furniture Workers of America*, 233 F. 2d 539	20
National Labor Relations Board v. *McBride*, 45 LRRM 2420, 2421–2422	20
National Labor Relations Board v. *Retail Clerks International Association*, 186 F. 2d 371, 203 F. 2d 165, 211 F. 2d 759, certiorari denied, 348 U.S. 839	25
National Labor Relations Board v. *Seven-Up Bottling Co.*, 344 U.S. 344	18
National Labor Relations Board v. *United Mine Workers*, 202 F. 2d 177	22
Siegel Co. v. *Federal Trade Commission*, 327 U.S. 608	18
United Mine Workers v. *Patton*, 211 F. 2d 742	23

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*):	
Section 7	2, 3, 14, 18
Section 8(b)	2
Section 8(b)(1)	2, 18
Section 8(b)(1)(A)	2, 4, 14, 15, 19, 20
Section 10(a)	2, 17
Section 10(b)	2
Section 10(c)	3, 17

Miscellaneous:

72 Harv. L. Rev. 1579	25
Note, The Role of Contempt Proceedings in Enforcing Orders of the National Labor Relations Board, 54 Col. L. Rev. 603, 614–615	25
Sen. Report No. 139, 82d Cong., 1st Sess., Labor Management Relations in the Bell Telephone System, p. 8, n. 19	21

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Court of Appeals (R. 105) is reported at 266 F. 2d 823. The Board's Decision and Order (R. 65–70) are reported at 120 NLRB 684.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1959 (R. 104), and a motion for reconsideration and rehearing was denied on June 26, 1959 (R. 113). The petition for a writ of certiorari was filed on September 22, 1959, and was granted on November 16, 1959 (R. 113). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).
>
> * * * * *
>
> SEC. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *
>
> * * * * *
>
> SEC. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *
>
> (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member there-

> of, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *.
>
> (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *.

QUESTION PRESENTED

Whether the National Labor Relations Board, in ordering petitioners to cease and desist from coercing and restraining not only the employees of the Ohio Consolidated Telephone Company (the particular employer involved in this case), but also employees of any other employer in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act, acted within its allowable discretion to select an appropriate remedy.

STATEMENT

A. The Board's findings of fact

The Board found that petitioners (a national labor union and its affiliated local), in violation of Section